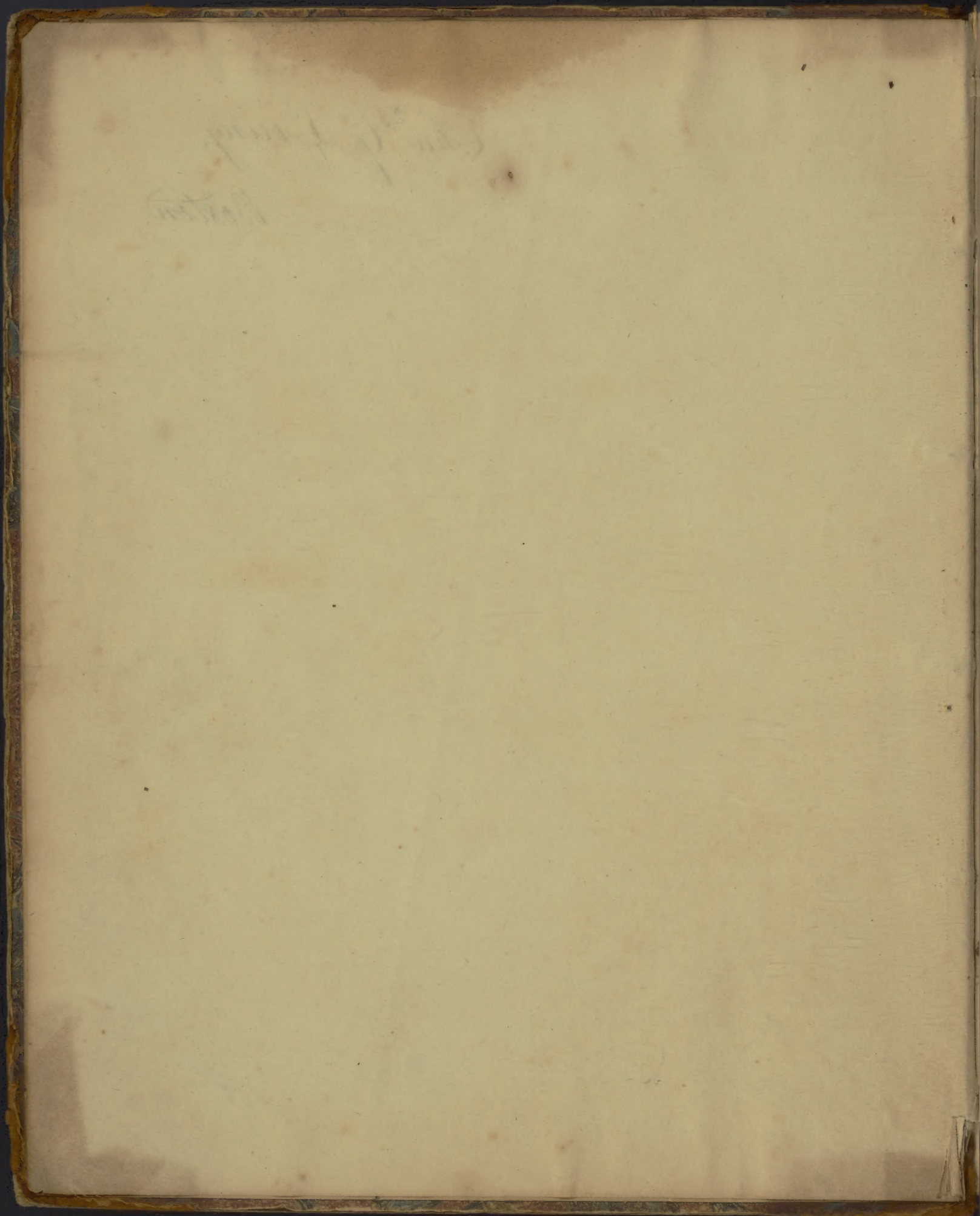


1933-17-0

Cha^s G. Loring

Boston.



100. *Regentia*

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Regentia

Mr. Robertson

Dear Sir

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above named subject. I am sorry to hear that you are not satisfied with the result of the examination. I have been very anxious to see that all the necessary precautions were taken, and I have no doubt that the examination was conducted in the most thorough manner. I have no objection to your repeating the examination at any time, and I will be very glad to see you and your party when you come. I am, Sir, very respectfully,
Your obedient servant,
J. H. [Signature]

Lex Mercatoria. By S. Gould.

Lect. 1. March 8. 1813

The Mercantile Law, or what is usually called the "Law Merchant," has been oftentimes denominated a "Particular Custom". But this is manifestly incorrect. A Particular Custom is one confined to particular local limits, one which does not extend thro' the realm; but the Law Merchant is not so confined. This is one reason why it is not a particular Custom.

Another reason why the Law Merchant is not a particular Custom is, that the Law Merchant need never be specially pleaded, while a particular custom always must be. Again—Except in new cases where the general usage is not ascertained, that usage can never be proved by witnesses; & yet all particular customs are provable by witnesses, & I apprehend that where the law merchant is provable by witnesses (as in new cases at Supra) it is not to instruct the Jury, but to inform the Ct. as to the usage. And in this way it is doubtless as proper for the Judges to apply to experienced persons in Trade for a knowledge of their customs & usage, as it is to apply to literary men in literary Questions.

Again the Law Merchant is not to be tried by a Jury, except in the single instance I have mentioned above, All these considerations go to show it is not a particular Custom. That it is, See 1. Bl. 75. Contra see Salik 125. 2 Bur 1214. 1 Bl. 12. 298. 3 Bur 1669. 4 T. 12. 204. Doug 72. B. 65 B.

The Law Merchant was originally confined in its operation, in case of inland bills of Exchange, to Merchants only. That is, in case of inland bills of Exchange no person other than a Merchant could avail himself of this System of Law. But it is not now confined in its operation to any particular class of men. It governs particular transactions throughout the realm, but the whole community are included in its operation. 3 Bl. 6. 436. 2 Id. 439. 461. 462. L. Ray. 175. 2 Vent 275. 310.

Lex Mercatoria -

It results then that the Mercantile Law is no other than a ^{an} ~~branch~~ of the Common Law properly so called. It is not a particular business, any more than any rule of the C. L. as e.g. that rule ^{which} allows the obligee to bring Debt or Bond. It is not confined within local limits, or to particular classes of ^{the} community.

II^d of Bills of Exchange & Promissory Notes.

A Bill of Exchange is an open letter of request, addressed by one person to another requesting him to pay a certain sum of money to a third person, or to any other to whom that 3^d person shall direct, or to the Bearer who is himself the holder, at a given time. 2 Blb 466. Fid or B. 3.

Bills of Exchange were invented for the purpose of facilitating distant remittances, by creating a credit in one country, & thereby extinguishing a debt in another. As if A. in America, owes a debt to B. in London, & C. in London owes A. Now A. by drawing a bill in favor of B. or C. his Debtor, & extinguishes the debt due from him (A) to B. & C. by accepting & paying the Bill, extinguishes the debt due from him (C) to A. - By so doing the risk & trouble attending a remittance of the debt due from C. to A. & also from A. to B. is wholly prevented. For a form of a Bill of Exchange see Fid 13. 17. Chitty B. 47 Lond.

It follows then that a Bill of Exchange may be drawn payable to "A. or his order" or which is the same thing "to the order of A." Or it may be drawn payable to "A. or bearer," or "to the bearer" generally, without naming any payee. And if the bill has the necessary qualities, it is a good bill if drawn in either of the above different ways. 1 Wils 190. 3 Bur 1517. 1527. 2 Blb. 6-

Lex Mercatoria.

The person who makes or gives the Bill is called the drawer.
the person on whom it is drawn is called, before his acceptance ^{the drawee and after acceptance} the Acceptor, the person to whom it is made payable is called the Payee,
If he orders it paid to another, this other is called the Indorsee;
Any one who has possession of the Bill, is called for the time being
the Holder. Thus the payee or the indorsee while the bill is in their posses-
sion is called the holder. Pid B. 4. 2 Bl. 467. 1 H. Bl. 546.

Indeed a Bill of Exchange is substantially nothing more nor
less than an assignment to the Payee of a debt due from the Drawee
to the Drawer, that is, a supposed debt, for it is not always the case
that a debt is actually due from the drawee to the drawer, but it
is so in contemplation of Law. Thus where A draws a Bill of Excha-
nge or B. payable to C. This is an assignment to C. by A of the de-
bt due him from B. 1 H. Bl 602. Chitty B. 13.

A Bill of Exchange properly so called differs from a com-
mon draft, or order by being negotiable. This is all the specific dif-
ference. Instruments called drafts or orders are very common in
the Country, yet they are not Bills of Exchange. The reason is they
do not contain operative words of transfer, that is, they are not ne-
gotiable. -

Now it becomes a very important subject in all Commer-
cial Countries to ascertain what instruments are, & what are not ne-
gotiable. There are certain instruments which may be assigned or trans-
ferred, as e.g. a bond &c. - yet this does not make them negotiable in-
struments.

A negotiable instrument is one, in which the Legal or
well as the Equitable interest may be assigned to a 3^d person, or
one who was not originally a party to the instrument & this is

Lex Mercatoria. - With. Gr. Prom. & Neg.

what distinguishes it from other instruments. The Equitable interest in a Bond, Covenant &c may be assigned, yet the Legal interest cannot, therefore such instruments are not negotiable. -

The negotiability of an instrument then, is that quality in it, which renders it assignable at Law. - It then becomes important to ascertain in what consists the difference in effect, between the assignment of the Legal & Equitable interest. - In many cases the difference is in title, & in others very important. -

The person who has the Legal interest in the assignment of an instrument can sue upon it, in his own name. The assignor has no control over it, he cannot discharge it, & has in fact no more concern with it than any other stranger. But if the assignee has only the Equitable interest, he cannot sue upon it in his own name, the assignor may control it & discharge the instrument precisely as if he had never parted with it. The assignee in this latter case, takes the instrument, subject to such incumbrance. -

If then A draws a Bill of Exchange on B. in favor of C. & the bill is assigned to D. he (D) may have his action on the Bill either against the payer or Drawer or acceptor. & Furthermore he (D) is the only person who can sue upon it, for the Legal & Equitable interest are both in him by the assignment. 7 T.R. 243. 3 B.L. 142. 4 B.L. 842. 1 K.B. 602. Chit 1. 5 B.L. 643.

This negotiability of instruments is opposed to the rule of the C.L. in relation to choses in action generally. For the rule of the C.L. is, that they cannot be assigned, because it promotes litigation. It is transferring a right to a Law suit. The meaning of the C.L. rule is, that the legal interest in the debt, raised or secured in the instrument cannot be transferred. Hence so far as the rule prevails the assignee of a chose in action cannot maintain an action in his own name. E.g.

Lex Mercatoria.

Bill. Pen. Fern. ⁹ (H. D.)

to bind and pay all to T. is by him given to D. The Court main-
tain an action on the bond in his own name, it must be brought in the name of
the original obligee. For the legal interest in a Bond cannot be regarded as a
merely negotiable instrument.

The rule is the same as to all former years notes, and if they are drawn up to the 1st or 2nd of the current year, to all former years, and notes the note of the 1st of the holder as to all other than mercantile contracts, payable on demand.

1900-10-1. note 1. 2326 note 1, 2 Feb. 112. 1 Mar. 211. 1 Apr. 5. 6. 10%.

It is a consequence of the C. L. rule that releases in action cannot be given
 until the obligee of the instrument, or party originally claiming, may
 release the Debt at Law as well as the mortgage upon which it is secured.
 S.

The general rule for all the banks is to pay for the notes payable to bearer on demand, and all very lately. But now of late all the banks pay for the notes payable to order or to bearer, amounting to 35\$ (or upwards) are paid in on the same footing with national banks of exchange & Treasury notes in London & many of the States. —

But now the question of an assignment which is not made in good faith at C. D. The Court of Equity will protect the assignment of shares in action the not in relation, if the assignment was for a valuable consideration, and when it is made by the joint debtors to one of them, & it has notice of the assignment, then if it pays the Bond to B. Court of Equity will compel him to pay it over again to C. because they notice the assignment of such share in action; The Court of Equity is assigned the interest in the bond as well as the principal, 1. 107. 2. 108. 3. 109. 4. 110. 5. 111. 6. 112. 7. 113. 8. 114. 9. 115. 10. 116. 11. 117. 12. 118. 13. 119. 14. 120. 15. 121. 16. 122. 17. 123. 18. 124. 19. 125. 20. 126. 21. 127. 22. 128. 23. 129. 24. 130. 25. 131. 26. 132. 27. 133. 28. 134. 29. 135. 30. 136. 31. 137. 32. 138. 33. 139. 34. 140. 35. 141. 36. 142. 37. 143. 38. 144. 39. 145. 40. 146. 41. 147. 42. 148. 43. 149. 44. 150. 45. 151. 46. 152. 47. 153. 48. 154. 49. 155. 50. 156. 51. 157. 52. 158. 53. 159. 54. 160. 55. 161. 56. 162. 57. 163. 58. 164. 59. 165. 60. 166. 61. 167. 62. 168. 63. 169. 64. 170. 65. 171. 66. 172. 67. 173. 68. 174. 69. 175. 70. 176. 71. 177. 72. 178. 73. 179. 74. 180. 75. 181. 76. 182. 77. 183. 78. 184. 79. 185. 80. 186. 81. 187. 82. 188. 83. 189. 84. 190. 85. 191. 86. 192. 87. 193. 88. 194. 89. 195. 90. 196. 91. 197. 92. 198. 93. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 82

622: 315 27: 182: 120, 411, 412.

Lex Mercatoria.

Will. Ex. & Prom. & Adm.

In Conn. the chose in action are not assignable, yet our Cts. have determined that where a chose in action has been assigned, & the original debtor has taken a discharge of the instrument ^{from} the creditor (or assignee) after he has had notice of the assignment, that he assignee may have an action in the court of the original debtor, for the ground in accepting the discharge, provided the original creditor (or assignee) is insolvent; & I apprehend says Mr. Gould, the rule would be the same if he was not insolvent.

And in Eng^d as in Conn. the contract of assignment, is now good at Law between the parties to it. — As E. g. if the obligee of a Bond assigns it to another, it is good at Law as between the assignee & assignor, tho' the assignment does not transfer the legal interest in the debt, so that the assignee can maintain an action as the obligor in his own name. This then is a modification of the C. L. rule, that is, it is a demolition so far as the above case differs from it.

It is true the old C. L. principle upon the general subject, remains inviolate. &

A mere assignment of a chose in action amounts to an implied covenant of the transfer of the beneficial interest in the debt, & that the assignee may use the name of the obligor (or assignor) to collect the same. The contract of assignment per se implies this covenant. And if the obligee (assignor) releases the debt, or receives the money due on the same, an action of Covenant Brokers his red him, & this is the usual remedy in Eng^d. 2 Bl. 472. Salk 125. 1 Fowl. 317. L. Ray. 643. 1242. 3 Keble 304. 2 C. 100. 68. &

I will here observe, that a chose in action may be assigned by Parol, tho' it is usually done by writing, as by indorsement on the back &c. — But it is not required to be in writing by C. L. for the C. L. did not allow of it — neither is it required by any Stat. to be done in writing, therefore it may be done by Parol. 4 T. R. 690. The same remedy viz Covenant Brokers, might doubtless be applied in Conn. tho' it is usual here to bring an action on the case for fraud. yet Covenant Brokers

Lex Mercatoria.

Bills. Ex. Prom. Notes

Indeed as the Law regards the Equitable interest of an assignee in a chose in action is for several purposes recognized in the Law.

Thus it has been determined, that an assignment of a chose in action not negotiable (as e.g. a Bond) is a sufficient consideration even at Law to support a promise by the assignee. Thus if the assignee of a Bond assigns it to a 3^d person, & he (the 3^d person) in consideration of it promises to pay a sum of money to the assignor, it binds him in Law. 1 Roll 29. 1 Sid 212. 2 B.C. 11. 20. Com. Dig. 4 T.R. 141.

Again - It has been determined that the assignor of a Bond having become bankrupt, may still maintain an action upon it in his own name as the assignee - or in other words, the assignee may sue & maintain an action in the name of the Bankrupt, & still a Bankrupt cannot maintain an action in his own right. Bankruptcy is always a good plea to defeat a debt, yet in the above case, the equitable interest appearing in the assignor the Law will allow the action in the name of the Bankrupt. This is another instance where the Equitable interest in a chose in action is recognized in the Law. 4 B. R. 5. 11. 12.

And it has been determined in an action on a Bond given to Assignee in trust for a Debt due to a 3^d person, that the Debt may be set off. Thus if I give a Bond in trust for A. in trust for B. & you sue me on the Bond, I may plead a debt due me from B. & set it off. tho' he does not appear as the record. This has been one rule, rather than any other rule, & from some cases I find Justice is inclined to Question the correctness of it. For the rule see 1 T.R. 621. 4 T.R. 730. 7 T.R. 122. 10 T.R. 200. 7 B.R. 663. 10 T.R. 104. 11 T.R. 309. Chitty 12

I would here observe in closing my observations on this particular subject, that the negotiability of Bills of Exchange is a very necessary rule in the Law, & that the Law of Bills of Exchange in the 17th

Lex Mercatoria.

Thus far as to the C.L. rule that choses in action are not negotiable. ^{Bill. Ex. Prom. & Note.}
 I now proceed to treat of the General Subject - -

I have to observe that generally in all actions on Simple Contracts the Plff must prove a sufficient Consideration, tho' as to actions on Special Contracts, as Deeds &c it is otherwise. 1 Tan C. 330. Lamer.

7 S. R. 351. Rid 47.

But in actions on Bills of Exchange tho' there are not Deeds, it is in general not necessary for plff to shew he gave a consideration for the Bill. In actions on Bills a consideration is implied as in case of Deeds, tho' they are not Deeds. In this respect a Bill of Exchange has one of the main qualities of a Deed, which is that it contains internal Evidence of a consideration, & this is the distinguishing ^{trait} in the difference between Simple & Special contracts. Rid 44. 1 Bl. 445. 2 L Ray, 754. 1 Bl. R. 487. 3. Salk 70. Gibb.

9. 51. 115. 116. 145.

The foregoing rules apply equally to negotiable Notes as to Bills of Exchange - & the rules hereafter to be laid down apply to both altho' I may not be careful enough to mention both in treating of the Subject. - -

But to the general rule last laid down viz. that a Bill of Exchange contains internal evidence of a consideration, there is an Exception where the holder claims as ^{not being a mere} bearer of the bill transferable by Delivery, & under suspicious circumstances. -

As if the Bill was lost by the Payee, & another person brings an action upon the bill, he may be required to prove that he or some intermediate person between him & the Payee paid a valuable consideration for it. For if the plff is finder, he will never be allowed to recover, tho' if the plff paid a valuable consideration for the bill, even to the Finder himself, he shall recover, because the subsequent

Lex Mercatoria.

Bills, Exc. Prom. Notes.

holder of negotiable instrument is not affected by the want of title in some former holder. The Example is founded in the plainest reason. It appears that another originally owned the instrument & lost it, & it is found by the Tiff found it or stole it. At any rate it has gone out of the hands of the original holder without consideration, & this may be enquired of. - But if the Tiff had bought the bill of the holder, or an assignee, or a bona fide holder. Here the credit is not to be impaired in the hands of a bona fide holder. B. Dues 15 16. 1523 2 Jan 256. Chitty 951. 201. 9. Long 11. B. C. 220.

But this Exception cannot hold as to the original Payee of the Bill because he appears on the instrument & only he is the very party claiming under it. - The rule is the same as to the indorsee of a bill; i.e. the Exception cannot hold where the bill is endorsed to the Tiff. - If B. is the holder of a bill, he is not to prove a consideration, tho't might prove that he lost it; for by the endorsement of A it appears B's title is good. All suspicion is removed. You have now been presented with the general rule, & the Exception to it, viz. in what cases the holder of a bill is obliged to prove a consideration.

On the other hand, the Debt is in general not permitted to prove that he received no consideration for the Bill, Except when the action is between the persons who are immediately concerned in the negotiation. As if the action is brought by the acceptor vs the drawer, or by the indorsee vs the indorser, in these cases the Debt may prove the want of consideration, for the parties in the suit are privies to the Contract; & by allowing the Debt to question the consideration, there is no danger that the credit of the bill will be injured, on the rights of any 3^d person at all. Again suppose the drawer sues the acceptor - now he can question the consideration, for by doing it the credit of the bill is not impaired nor the rights of any stranger infringed, & the parties in the suit are immediately concerned in the negotiation of the bill;

Lex Mercatoria.

Bills Ex. Prom. & Notes.

Hence where a Bill has been transferred after it has been noted for non-payment this will be sufficient evidence for the Jury to presume that the holder knew, at the time, the facts which rendered the transfer unfair. And if it can in any way be proved that the holder, at the time of transferring the Bill knew it was dishonored, the rule is the same whether the Bill is noted or not. 3 T. R. 423. 7 T. R. 423.

Indeed it has been said that a holder who receives a Bill after it is payable, is liable of course to all the Equities, to which the Bill was liable in the hands of the original party, & this independent of any notice. This opinion is advanced by Justice Buller, & some others - but I am inclined to doubt its correctness. A later case implies a contradiction. According to this opinion there is no need of leaving it to the Jury to presume want of consideration &c. (at Supra) for according to Buller's opinion he is liable of course to all the original parties who have been - 7 T. R. 423. 3 H. 43. Rid 243. 1 Wils 230. 2 New R. 170. Combe 414.

Bills of Exchange are divided into 2 kinds, viz. Foreign (and) Inland. - Foreign Bills of Exchange are those which are drawn in one Country or Sovereign State & payable in another. Inland Bills of Exchange are those which are payable in the Country where they are drawn. - this is the characteristic distinction, there is no difference in this structure. Rid. 10.

Bankers' checks, or drafts on Bankers are in ~~form~~ like Bills of Exchange. In one respect they differ however in ~~form~~ from some Bills, for they are never payable to order, but always payable to Bearer, & of course negotiable by manual delivery. 7 T. R. 423. Whitby 16. 17. 109. 171.

These instruments viz. Bankers' checks, drafts on Bankers, & Bankers' Cash notes are negotiable like Bills of Exchange. Form n.

Lex Mercatoria.

Bills &c. *Promit Nihil*

by they were not. The rule as above is now well settled. 3 Burr 1517.

These instruments are not payable untill demanded & in this case they differ from Bills of Exchange which are not usually payable on demand, but on a particular day, or so many days after sight. Chitty 16-44-45. 141.
7 L. R. 423.

These instruments may be & usually are declared upon as Bills of Exchange, tho' it is said they cannot be protested, i.e. a protest will answer no purpose. Same Auth. above 3 Burr 1517-1519.

They are also treated as Cash - for they have become in Eng. a circulating medium. This is not the case in Am. for private Banks are here prohibited. But in Eng. & in many of the States they are allowed & in these places such instruments constitute a great portion of the circulating medium. They are for this reason denominated Cash & will pass in a bill is nomine L. Ray. 744. Lang 635. 7 L. R. 423.

If these Instruments &c. are not demanded in a reasonable time, & the Banker fails, the holder must bear the loss. This is reasonable for it is in his power to demand payment of the bill immediately, & if he neglects for an unreasonable length of time, he shall not be permitted to resort for indemnity to the person of whom he originally received the bill. The Law does not point out a particular time when the demand shall be made, it must therefore be within a reasonable time. -
1 Bl. M. 1. 1 L. Ray. 744. L. R. 423.

And I would here make an observation which will frequently apply during the title, viz. that what is a reasonable time, which was formerly considered a Question of fact determined by the Jury is now a mere Question of Law determined by the Court. There is some ambiguity in the Books owing to a want of perspicuity in laying down the rule. - There was a great diversity in the decisions of Juries upon what was, & what was not a reasonable time & thereby a great mischief in the

Lex Mercatoria.

13

Bill. Ex. Prom. & Note.

Law merchant was rendered uncertain & unsettled. For this reason the Ct. took upon themselves the liberty to determine what was a reasonable time. I observed there was an ambiguity in the Books upon this rule owing to a want of precision in expression in laying it down. It is true the facts being given, whether it is a reasonable time or not is a Question of Law to be determined by the Court. What is a reasonable time is in the abstract a matter of Law, for the Ct. to determine, but when in any particular instance, a dispute, as to the time being reasonable arises, it is, in the first instance a mixed Question, & if the facts are not settled by the parties, the Jury must determine them, but these facts being determined, it then becomes a Question of Law, whether reasonable or not. 2

Thus - Suppose the holder of a Bank check delays to present it for payment for a month, & the Question is, is this a reasonable time? Now there must occur in law a number of Questions of Fact - as how far do the parties live asunder? for it makes a vast difference in the idea of neglect whether the parties live 500 miles apart, or in the same neighbourhood. the next Question of Fact is, what is the conveyance? Is it by Mail or otherwise? - if by mail how often does it go to & from the different places of abode of the parties? - & what is the length of time employed in the journey? - There are also Questions of Fact which are important to be ascertained. But suppose these Questions of Fact are all agreed upon or conceded by the parties, it then becomes a mere Question of Law, for the Court to decide. But if they are not conceded by the parties, the Question is a mixed one, & the Court direct the Jury if they find the facts to be so & so to find for the Plaintiff, & if different for the Defendant, as the case may be. -

1 Rid 41. 42. 100. 11. 1. 15. 550. 2 B. 910. 1244. 1175. Brax Lex Mer. 482.

I have been thus far considering the general nature of Bills of Exchange. I come now to treat of the necessary requisites & component parts of a B. of Exchd -

List of the Parties. -

Lex Mercatoria.

Bill of Ex. Comm. & Notes.

And here I would again observe that, that formerly it was holden that no other than a merchant or one engaged in mercantile transactions could be party to a Bill of Exchange. But it has long been settled that any person having ability & under no legal incapacity, he contract may be parties to a Bill. The Law Merchant regulates particular transactions, but is not confined in its operation to any particular class of Persons. - Chitty 12. Carth 282. 2 Vent 292. Combs 152. 1 Shan 125. 1 Salk 125.

And not only natural persons capable of contracting, but also Corporations may be parties to a bill of Exchange. A Corporation must become a party to a Bill by the act of its agent or attorney. They may authorize a person to act for & in the name of the corporation whose act will be binding upon them. But they cannot sign, endorse, or in any way become parties to a Bill in their aggregate capacity - It must be done by procuration. 1 Atk 181. 2 Burr 12. 16. -

And I would further observe that if a Bill is drawn, accepted or endorsed by a person who is legally incapable to bind himself, yet it will still be good as to all others who were parties & capable of binding themselves. Thus suppose a Bill is drawn by an Infant & endorsed by an Adult - the adult would be bound tho' the Infant is not. So if a Judge draws a Bill, & a person legally capable endorses it - he is bound. 2 Atk 181. 182. Chitty 31. -

The original parties to a bill are generally three, tho' by subsequent negotiation the parties may become indefinite. The original parties to a Bill are the Drawer, the Drawee, & the Payee. Their characters have before been explained. Rid (very incorrectly) observes that there are 4 original parties to a Bill. - In legal theory there are three parties, but there need not be three persons actually engaged in the creation of the Bill. One person may act in two capacities. Chitty 22. Rid 2. - D.

It is not necessary however that there should be 3 persons originally concerned to make a Bill, tho' in the theory of the Law there are 3 persons concerned - but one

Lex Mercatoria.

Joills. Cur. Therrid. Notes.

person may act in two capacities - as e.g. one may draw a bill on another, payable to his own order. Here one person has the rights and capacities of Drawer & Payee - In this case there are but 2 persons concerned yet one acts in a double capacity, ... And as one may draw a bill on another payable to his own order, so he may draw a Bill upon himself payable to a 2^d person, or to the order of a 3^d person.

In both these cases one acts in 2 capacities. 1 L. 121 Do. 6 Nov. 29. Fild 3. Gutter
2 by 4 h. 2

Indeed there may be a valid bill with but one actual party in the case. Thus a man may draw a bill upon himself payable to his own order. & it is a good bill. It is true the bill is entirely inoperative while it remains in his own hands, but if he negotiates the Bill, he is liable in the capacity of Drawer, acceptor, or indorser. 3 Bur 1677. Fild 24. Gutter 509.

But I have observed that a person not originally a party may become a party to a bill, as if the bill is endorsed by him. An endorsement makes a new party. And further one may become party to a Bill by negotiating it for the honor of the Drawer or indorser - the bill having been dishonored. The Drawer or indorser is supposed absent, & any person may by his own voluntary act, become a party by endorsing the Bill (ut supra) whether in reality the Drawer or indorser is dead or to do or not. This is called an acceptance Supra protest, for one who accepts a bill after the protest. He acquires certain rights, & is liable to certain duties, which will hereafter be considered. - Doan v. H. Therrid 33. 4-450. Gutter 129. Fild 103. 106. Gutter 23. 103. 180.

The acceptance Supra protest is an assistance for the honor of the Drawer or indorser of the bill to accept by the drawer or indorser - but further if the bill has been accepted by the drawer, & he has afterwards refused payment another person may become a party by paying it for the honor of the drawer & this is called payment Supra protest. 184. 112. Doan Lex Merc. Page 429. Fild 154-5. Gutter 23. 115-163-164.

A person may become a Drawer, acceptor, or indorser, not only by

Lex Mercatoria.

Bill. - Ex. Prom. L. & V. 100.

an immediate act, but by the act of his agent or partner. Indeed whenever partner binds his copartner, he does it in character of an agent for the Partnership. 9 Co 73? L. Ray. 930.6 Mod 36. - 12 H 346.564. ~

And whenever a party draws, accepts, or endorses a bill by the act of an agent, he is said to have done so by procuration. Boar L. M. Placitum 42. Chit 24.

Now as the act of the agent is merely ministerial, persons incapable of binding themselves may as agents bind others. Thus if one employs an Agent, Friend, Clerk or even an Outlaw ^{or} I give them authority to act for him he will be bound by their acts. - The agent in this case acts merely ministerially & by so doing the rights of the agent as Agent, Friend, Clerk or outlaw (if indeed an outlaw may be said to have any rights) are not at all invaded or violated in consequence of the agency. He is merely the instrument by which the Principal himself is bound. 19. 152? Chit 24.

And it is a settled rule that an agent may be constituted for any of these purposes as well by Parol as by Deed. There is no need of a Power of Attorney to authorize another to make for one a simple contract, and a Bill of Exchange is a simple contract. Boar L. M. Placitum 42. 12 Mod 564. ~

A general agent, i.e. one acting under an unlimited authority, may bind his principal to an unlimited extent. But a special agent, i.e. one appointed for a special purpose, & acting of course under an ~~un~~ limited authority can bind his principal only to the extent of that authority. - If I give a man authority to draw a Bill in my name for 1000^{off} he can bind me in a bill to that amount but no further. - On the other hand if I give a man a general authority to transact my business to draw bills in my name to an indefinite amount he is a general agent, & his acts will be binding upon me. 3 L. R. 757. 1 Cr. R. 11. 6 J. R. 51. 1 H. Bl. 155. 2 W. 615. -

Lex Mercatoria.

Bill. Ex. Prom. Note

A person by signing his name to a Blank piece of paper & delivering it to another, authorizes the latter to fill it up with whatever sum he pleases. It is as Lord Mansfield says, an indefinite letter of credit. In Eng.^d where Stamps are used, it could not be filled up with a greater sum than what is imported by the stamp, i.e. it could not be made binding upon the party to a greater amount. This rule was the same in this Country in those days when the Stamp act was in operation in America. But where this Law of stamps does not exist & there is no restriction by Stat. the general rule holds. Doug 496. on 514. 1 W. Bl. 313. Kid 110? Chitty 25-56. ~

I would observe that this rule does not hold in case where a person signs as above & delivers it over to another if this other fills up the Blank with a Deed. There must be a special power to make a Deed. The rule holds, as to all mercantile instruments. Shep. Touch. 54. Perk. 5. 118. 4. Cruise Di 26. A deed must take effect as delivered.

But an agent who is authorized to draw accept or endorse a Bill of Exchange cannot delegate his authority to draw &c. to a 3^d person unless he is expressly authorized to do so. It is a general rule in legislation as well as municipal Law that 'delegated authority' cannot be performed by Proxy. A Peer of Eng.^d who derives his seat from a line of ancestry may vote by Proxy - but a representative of the people whose authority is delegated to him by the people, as a Commons, cannot ^{vote by} proxy. If then I delegate authority to an agent to act for me, & give him no power to delegate his authority he cannot do it. 1 Roll 330. 9 Co 75. ~

In drawing, endorsing or accepting a bill of Exchange for a principal, the agent must do the act in the Name of the Principal. If he does not thus act in the name of the Principal, he (the agent) will not be bound, but the agent himself will be. But if he does act in the name of the Principal, he himself is never bound, but y^e

Lex Mercatoria.

Principal is not sign ^{agent} ~~assigned~~. The most correct and approved way is to sign thus: "A. B. by C. D. his Attorney. It may be thus: "C. D. Atty for A. B." & the result is the principal is bound in either case. 9 Co 75 2 Stra 705. C. J. R. 176. Comm Dig. tit. Atty. C. 14. 1 L. R. 181. 2 Stra 955. Chitty 27. 6. 75. 2

One of two joint traders may by an acceptance in the name of both, on of the Firm, bind both, provided the Bill relates to the Partnership concerns. For the purpose of binding the Partnership by the act of one, each one of the Partners is an agent for the whole Partnership; & on this principle the act of one binds the Firm. 1 Salk 125. L. Ray. 175. 1784. Salk 292. 7 L. R. 207. 12 Mod 354. Peck R 16.

It is said however that the act of one partner, if it concerns only his separate interest will not bind the whole Partnership. This rule seems questionable, because there are opinions & I think reasonable ones, that the act of one partner in the name of the firm, tho for his own separate interest will bind the whole Partnership, provided the holder of the Bill did not know that the partner was acting for his own separate interest. If he did know it will not bind the whole Partnership. When partners enter into business, they give an implied credit to the acts of each other, and when then one Partner acts professedly for the Firm it ought to bind the firm, else by this implied credit held out to the world an innocent person may be defrauded. & it is a general legal principle, that when one of two innocent persons has been injured by the act of a third he who has enabled this 3^d person to do the injury shall suffer rather than the other. Salk 125. Peck R 40. 2 Vern 277. 292. Exp Di 524. Chitty B. 28.

It seems however that two persons, who are not now Partners, may by making a Bill payable to their own order, make themselves *pro facto* partners as to that transaction, so that one may endorse for & bind both. It might seem that this doctrine is denied in a case cited L. M. Magfield,

Lex Mercatoria.

Fin. Ex. Sum. 2 of 1892.

where he admitted the testimony of Merchants to prove the endorsement not valid, unless made by both, - But in the case before him the person did not sign in the name of both, but in his own individual capacity - so that L. Mansfield did not decide that it would not be binding on both, had it been signed for both. Wat. Law Port. 259. Doug 659 - Pick R. 16 Chitty B. 29 - -

If a Bill is drawn upon a Corporation, & accepted by one of the members, as such, in the name of the Corporation - it will not bind, unless this person is authorized by the Corporation to accept & appointed for that purpose. It is not the act of the Corporation. The individuals comprising a Corpⁿ are unknown in lg^t. L^w it being an ideal entity, & it can bind itself only by a corporate act, as by note. There being no authority delegated the act of this person cannot bind. Chit 29. -

When one Partner draws a Bill for himself & Partner, he should do it as for himself & the other, or in their name of the Firm, else it is doubtful according to the English Authorities whether the Partner who did not act is bound. Our Sup.^m cannot have decided that both were bound tho' only one acted, provided the Note or Bill was drawn for a Partnership concern. Salk. 126. L. Ray. 175-1444. Doug 652. Ch. T. Do. 56. 75.

March 10. 1819. Lecture 3^d

Form & requisites of a Bill.—

No particular form or set of words is necessary in the creation of a Bill of Exchange - tho' there are ordinary words, which have become so established that they are usually followed. The ordinary way is "at such a time," or "so long after sight &c. pay to A. B. or his order," or "A B or bearer," or "to the bearer" alone. But neither of these forms are essential: for the construction of all mercantile instruments is liberal.

Lex Mercatoria.

Bill. Ex. Prom. & Note.

Hence a promise to account with it, on his order, for a certain sum has been holden a good bill. Com. W. tit. "Obligation" B. 1. 2. F. 61. Stra 629. L. Ray. 1326. 3 Wils 213. Chitty 31. 5th. ~

But the instrument must contain certain essential qualities, else it will not operate as a bill of exchange. It will not unless containing these qualities operate as a legal instrument properly so called, tho' it may be evidence of a personal promise to pay. But it is mere evidence and does not constitute an instrument.

In treatises you will frequently find the term "instrument" used. This word in the sense there used is nowhere defined. But by an "instrument" is meant such a writing as may itself be sued upon, which can be a foundation for a suit & is the Basis of a recovery. A Bill of Exchange, a Bond, a Deed, a Promissory Note is such an instrument. But there are certain unrecalled writings which will not of themselves support an action - when a suit is commenced, it is brought on a personal promise, and these writings are introduced as evidence of such promise. There are not "instruments." L. Ray. 1545. 2 East 359. Chitty 173. 184-190-192. ~

The precise difference then is this - an "instrument" is a writing upon which an action may be founded; upon which the declaration is grounded, & which is the basis of a recovery. But a writing not an instrument is one which is only evidence of a personal promise. Without these essential qualifications a writing will not carry with it any inferential evidence of a consideration - neither will it be negotiable - it is not a Bill of Exchange. 3 Wils 213. 2 Bl. R. 1072. 5 T. R. 485. 7 GC 241. 1 Th. Bl. 239. 242. ~

These substantial requisites are in reality but Two - tho' they are sometimes (logically) divided into Three. - The first is that the

Lex Mercatoria.

instrument be payable at all events & not upon a contingency. The Second is that it be for money only - not in money & any collateral article, or money & a collateral act, (action) and a portion not in any collateral article or act altogether. 3 Brk 213. 2 D.C. R. 1072. 5 T.R. 445. 7 H. 241. 1 T.B. Pl. 299. Stra 1151. 1271. ~

It is frequently mentioned as an additional requisite, that the Bill must not be confined in its payment to any particular fund. This is not in reality an additional requisite, but a branch of the first. The first is - it is ^{to} be payable at all events, & not upon a contingency. The reason of this requisite is - that if it were payable on a contingency, it would perplex mercantile transactions by embarrassing the credit of the bill. If then a writing in form of a Bill of Exchange is drawn payable on an event which may never happen it is not a Bill & therefore not negotiable. Thus if a writing is drawn payable on the day of A's marriage. This is not a bill & indeed it is not an instrument according to the description before given - it is mere evidence of a parol agreement. The reason is as above, that it would perplex mercantile transactions by embarrassing the credit of the Bill. 5 T.R. 445. 3 Wils 213. 1 Bur 325. Stra 1151. Rid 56. ~

And for the same reason if a writing in form of a Bill is made payable out of a particular fund which may not be productive it is not a Bill of Exchange & not negotiable. Indeed if the Bill is not negotiable at its inception it can never become so, altho' the fund on which it is drawn may afterwards become productive. Thus if A. draw a bill of Exchange on B. payable out of a particular fund which may become productive, it is not a Bill of Exchange & of course not negotiable, but yet it is evidence of a parol agreement. L. Ray. 1362. 1396. 1563. 2 Wils 207. Bl. R. 182. Stra 593. 1151. 1211. 2 L.R. 343. 1 Wils 240. ~

It seems however according to some opinions that such a writing may be considered & decided upon as a Bill of Exchange in an action between

Lex Mercatoria

between the parties. There are opposite opinions, but the former ^{Bill. Ex. O. non. 4. Nov. 1800.} ~~former~~ I think the better one. I can see no reason why it may not be considered as a bill; so far as respects the original parties to it; but the reason is conclusive why it should not be considered a Bill so far as others than the original parties are concerned, viz that were this the case it would tend to embarrass & perplex commercial transactions. But the force of this reason, does not at all apply to prevent its being considered a bill with regard to the original parties. This paper medium is entitled to no particular protection, nor subject to any rules not common to other instruments - Except where they have been negotiated. But where they have been negotiated, they are protected, & subject to certain rules. 7 T. R. 243. - Chitty 33-48.
5 T. R. 445. 6 D. 123. 2 B. R. 1072. Ryd 58-65. -

But to the general rule that a Bill may not be drawn exclusively upon a particular fund there is an Exception where the event on which the payment is to be made, is of notoriety, morally certain & respects trade. Thus it has been determined that a Bill payable in two months after a Ship is paid off is a good bill. The payment of the Ship Crew &c. is a matter of notoriety, the transaction respects trade, & so high is the Credit of the English Shippers that it is considered morally certain. Stam 24. 1 Wils 262.
Stam N. P. 272. Ryd 57. -

And if the event on which the bill is payable is one which must inevitably happen at some future time however distant, it is a good Bill. Thus if a Bill is made payable 6 months after the Death of A. it is a good bill & negotiable. The day of payment will inevitably arrive - how soon is uncertain. So also a bill payable in one year after A becomes of full age, (specifying that time) is negotiable - for altho' he may literally never attain full age (as if he die) yet the Bill is construed as one payable at that time when by computation he would attain that age,

Lex Mercatoria.

Bill Ex. Prom. Note.

If he should chance to live so long. If the time is not specified it is not negotiable; it then depends upon a contingency. Stea 1217. - 1 Bur 226. Fild 57. Chitty B. 33. 4. ~

But tho' a Bill confined to a particular fund is not negotiable - yet the mentioning a fund merely to inform the Drawee how he may reimburse himself will not vitiate it. For here the Bill by the supposition is not drawn upon the fund, but one payable at all events. This bill imports a personal credit to the Draw... Stea 962. L. Ray. 1441. Barnad. 12. Doug 571. ~

The rule is the same as to words inserted in the Bill for the purpose of pointing out the consideration of acceptance. Here tho' a particular fund is named, yet the Bill is not confined in its payment to that fund. Thus where a Bill was drawn in these words - "pay so much, at such a time, value received out of my Estate at L." This Bill is good, for the bill is not drawn upon the fund itself - but it is mentioned for the purpose merely, of pointing out the consideration of acceptance. L. Ray. 1542. 7 T. R. 733. Chit 34. Thus far as to the first requisite. ~

The Second requisite is, the Bill must be payable in money only. Hence an order payable in Goods is not a bill of Exchange. If I direct an order to a Merchant, to deliver goods, wares, & merchandize to A - this is not a Bill of Exchange and cannot be negotiated. The reason is, Bills of Exchange were devised & adopted for the purpose of facilitating the remittance of money. - they were never intended as a medium of barter & exchange; besides if an order could be converted into a Bill of Exchange, & made negotiable, it would greatly perplex commerce, & in many cases be very hard on the Drawee. As, E. g. Suppose a man sh. draws an order on his neighbor for 1000^l payable in Grindstones & this order should be negotiated in Canada. The Drawee would be compelled to pay y^e bill only in the article specified - but he would be obliged to transport the

Lex Mercatoria.

Bills. Ex. Prom. & Notes.

Article at an enormous Expense - or do what he never intended, pay the amount of it in money. For this reason it is that a writing payable in anything but money is not negotiable. Chitty 3d. Ryd 56. ~

And further the bill must be payable in money only. A bill payable partly in money, & partly in goods, or partly in money & partly in labor is not negotiable for the same reason. Stoa 1271. Ryd 50. Chit 55. ~

It would seem hardly necessary to describe a Bill payable in money only, as contradistinguished from one not so payable. I will barely observe that any order which cannot be complied with in any part but by payment in money is a bill of Exchange within the meaning of the rule. 10 Mod 247. ~

It is not to be understood that the writings, wanting the necessary requisites of a Bill of Exchange, are of no force whatever. They are not Bills it is true, yet as I before remarked they are evidences of a contract. Thus a writing payable on a contingency, may be enforced after the happening of that contingency. So also if the fund on which the writing is drawn becomes productive, the special contract of which the writing is evidence may be enforced, and I have already observed that the latter opinion seemed to be that such writings, as between the original parties, might be considered & declared upon as Bills of Exchange. 2 B.C.R. 1072. Ryd 54. ~

In the case of Foreign Bills of Exchange, it is usual to make ^{three} copies of the same tenor & date, so that if one or two of them should by chance be lost the money may be paid on the third. In such case to prevent more than one payment, they should import to be duplicates & triplicates, & for this purpose each one should refer to the other, & be made payable on condition that payment has not been made on either of the others. Chitty 45. 46. ~

The Bill should always point out the ^{payee} ~~payee~~, yet it need not name the payee.

Lex Mercatoria.

25

Bills. in. Trans. & Nod.

As it may be drawn payable to Bearer. It is said however that if the Bill does not designate any payee by name or otherwise, but designates the person of whom the value was received - that person shall be considered the Payee. As e.g. a bill drawn thus - "For value received of A. B." &c. - here A. B. shall be considered the Payee. This is however questionable. Chitty 467. Pothier 1st Ed. 604.

It is settled that a Bill may be made payable to a fictitious payee - but the more these Bills have lately made in the Ct. of Westminster Hall render it desirable that such Bills (payable to fictitious payees) should never again be allowed. There was a set of speculating men in England who drew Bills to a most incalculable amount payable to Sirrany Hargreave & Co. which in fact no such company ever existed. It is evident that such a bill must be payable to bearer or else it is not payable at all. The bill was also endorsed in the name of a fictitious person - & therefore through the endorsement no little could be created. But to prevent such flagrant fraud from being practised on innocent 3^d persons, it was definitively settled after much litigation, that a bill made payable to a fictitious payee or order, is in legal effect payable to bearer, as to such parties who know the payee to be fictitious at the time they become parties to the Bill - but as to such persons who did not know the payee to be fictitious it was otherwise. Thus if the drawer knows the payee to be fictitious at the time of acceptance, he is liable on the acceptance to a bona fide holder - But if he was ignorant of this fact, he will not be liable to pay the Bill altho he has accepted it. Such Bills however have been highly censured & it has been often said, that a person drawing a Bill & endorsing a fictitious name upon it, for the purpose of getting it into circulation, & thereby injuring a 3^d person, is guilty of Forgery. 3 L. R. 174.

142. 441. - 1 L. Ed. 313. - 386. - 569. - 226. 174. - 244. - Ryd 204. - 219. - 227.
Chitty. 474. 2d Ed. 109. 202.

And a Bill may be made payable to one person for the use of another.

Lex Mercatoria.

Bill. Ex. Shum. 2. 11. 12.

another, & this is no objection to the validity of the Bill. The nominal Payee will have the legal power of transfer - & there is nothing in it to prevent negotiation. Coath 5. 2 Vent 307. - 6 L. R. 123. - Fy d 104. - 1 H. Bl. 313. - Chit. 48. - 112. -

Every Bill to be negotiable must contain operative words of transfer, i.e. terms of negotiation. The word order or bearer or some word tantamount, is indispensable; otherwise the bill is not negotiable. It is these operative words of transfer which make the bill negotiable. A Bill payable to A is an old fashioned chose in action, not negotiable. The term bearer or order is the most usual. - A Bill payable to A. on his assigns is negotiable. The word assigns is equivalent to order. They are both transferable only by endorsement; but where it is payable to bearer, it is negotiable by manual delivery. Deas L. M. 3. - 3 With 211. - 2 Stra 212. - 2 Ventr 302.

And a Bill payable to the "order of A," is the same thing in effect as a Bill payable to A, "on order." When it is payable "to the order of A," it would seem in strictness that it is to be paid to A's order & not to A himself - But this is not the construction put upon it - it is considered as the same as if drawn payable to "A on order." Coath 403. - 2 Shum 4. - Fy d 104. - Chit. 15. 134. -

The words "value received" are according to all ordinary forms inserted in all Bills of Exchange. But it is now settled that they are not necessary either in the bill or in the endorsement - For in both cases a valuable consideration is presumed or implied. 2 Shum 496. - L. Ray? 1441. - 3 With 212. - 4 Mod 267. - 196. 310. - Pinterose 242. -

But to enable the holder to recover interest and Damages in default of payment on acceptance by the acceptor or drawer these words (viz. value received) are made necessary by Stat of 9. & 10 W. III. c. 2 and 3 & 4 Ann. - These two Statutes have thus rendered these words necessary.

Lex Mercatoria.

27

but it is not a rule of mercantile Law. Fina 910. - Hyd 71. - Chitty 50. 93.

94. -

I have already adverted generally to cases where the want of consideration in a bill &c. may be averred - I have further to observe that if the bill is for accommodation merely, & that fact is known by the indorsee at the time of receiving it, he can recover no more than he paid for the bill, tho' the amount paid may be less than the nominal sum on the face of it. These accommodation bills are very frequent. E.g. A applies to B. for a Bill of Exchange for 100^l to enable him to raise money - B. draws the bill in B's favor, & B endorses the bill to C. 50^l. Now C. is aware the fact of its being an accommodation bill can recover only the 50^l which he paid for the bill. 1 Esp. R. 261. - Peck R. 61. 216. - 2 Cairnes 244. -

And here it may be laid down as a general & I trust a universal rule that in all cases in which a Debt may arise a want of consideration he may also aver the consideration was illegal - & in many cases the latter defence may be made when the former cannot. 1 Bl. R. 448. -

With regard to illegal considerations, it is an undoubted rule, that as between those parties immediately concerned in the illegal transactions is always a good defence. - As e.g. between the Drawer & the Payee, & between the Drawer & acceptance. - Doug 014. - 6 D.C. Hyd 244. -

And a 3^d person knowing of the illegality at the time he became a party to the Bill, cannot recover upon it. Take the rules together - they may be exemplified by these 2 Examples. A draws a bill upon an illegal consideration, payable to B. - B cannot recover of A. They are privies to the illegality. - But further if B. endorses the bill to C. who also knows of the illegality - he cannot recover. - 1 Esp. R. 166. - 6 T. R. 61. - Contra 1 Esp. R. 6. Sum 6 -

If however a 3^d person, who having put his name on the Bill at the

Lex Mercatoria.

request of the holder, has been compelled to pay it, he may recover the amount paid, altho he knew it to be drawn upon an illegal consideration. But this might be recovered on the ground of the payment of the money. He, in putting himself to the bill to give it greater credit, is a man volunteer, & stands in the nature of a surety - & is not considered a party to the transaction. Peck v. 215.

Whitby. 523. ~

March 11. 1813. Lecture 4th ~

For the purpose of pursuing this subject, I will again remind you of the general rule before laid down - viz. that as between the parties immediately concerned in the transaction the illegality of the consideration is a good defence. And I would further observe that in general any holder of a bill upon such consideration, & having no knowledge of its original illegality may recover upon it. This rule presupposes the bill to have been negotiated; for according to the general rule it is not recoverable as between the original parties. There cannot be ignorance of the illegality. A different rule then is adopted as to the subsequent holder of the bill who came into possession of it fairly, & not knowing of the illegality of the consideration at the time of receiving it - & if he finds out subsequent to his receiving the bill the illegality of its consideration, still he will not be deprived of his right of recovery. Page 240. - Doug 614 or 636. - 1 T. R. 300. - 3 Gl. 404 & 42. - 454. 527. - 7 Gl. 607. - 8 Gl. 590. - 1 Bl. R. 445. - Stra 1155. ~

This then is the general rule - But it seems there is an Exception to it operating of the holder where the bill is endorsed after it has become payable. You recollect, according to a former rule, that a Legend. had no right to question the consideration where the bill is endorsed after it has become due. Or that the Jury might presume, upon trivial circumstances; the holder's knowledge of the want of consideration. In such case as the Legend may raise the presumption that the holder knows of the want of consideration, so also it is clear he may raise the presumption

Lex Mercatoria.

of the holder's knowledge of the illegality of the consideration, when the Bill has been endorsed after the day of payment has arrived. Page 243. 244.

There is also another Exception as to persons, who become holders in cases where the Statute Law has declared the Bill void. That is, in those cases the holder tho' having no knowledge of the illegality of the consideration, yet he cannot recover. Thus suppose the Bill is drawn upon an unlawful consideration, or upon money won at play, or in consideration that a creditor will sign a Bankrupt's certificate; in all these cases the Statute has declared the Bill void, & an innocent endorser cannot recover as the drawer, acceptor, or indorser. Doug 646 or 670. - 2 H. Bl. 647. - Stra 1155. - Garth 356. - 1 East 42. - 1 Ex. R. 274.

The distinction then as it stands in the Books, so far as respects the present Exception, is this - If the consideration is illegal at C. L. the subsequent bona fide holder can recover, & this without Exception. But where the Statute Law has rendered the Bill void, even a subsequent bona fide holder cannot recover. But I very much doubt that the reason of this distinction arises from the circumstance of a prohibition by C. L. in one case, & in the other by Statute Law. If the consideration is immoral at C. L. there can be no recovery as between the original parties; I suppose the Bill is given in consideration of the commission of a certain crime - Now this Bill cannot be recovered as between the parties to it, but if it is negotiated, it may be recovered in the hands of a subsequent bona fide holder.

Why then can it not be recovered in the hands of a subsequent bona fide holder where the Statute Law has rendered the Bill void? It is not merely because the Statute declares the Bill void - the true reason I conceive to be this - where a Statute Law renders a bill void, if ever a subsequent bona fide holder were permitted to recover upon it, the Statute would always be defeated & evaded - & notwithstanding the Statute the parties intended to be protected would be oppressed. E. g. The Statute declares a Bill

Lex Mercatoria.

Bills of Ex. & Prom. & N. B.

drawn upon an unwarranted consideration to be void. The borrower (who is the Drawer) is intended by the Statute to be protected; but if by negotiation the Drawer could be subjected, the object of the Statute would be entirely defeated. So also if a bill is drawn in consideration of a gaming debt - The Statute declaring the Bill void is intended to protect the loser - But he is not protected if he can be subjected to the payment of the Bill into whatever hands it may ever afterwards come. The Bill (if by so doing the Drawer could be made liable) would always be negotiated. Again suppose a Bill drawn in consideration of the creditor signing a Bankrupts commission - This is unjust & oppressive a fraud upon 3^d persons - & such Bills are prohibited by Statute. But if the bona fide holder at the subsequent were permitted to receive upon it, the Statute also in this case would be evaded & the person whom it designed to protect, would be oppressed notwithstanding. Chap. 1. Sec. 224.

This reasoning will not apply to cases occurring under the C. L. prohibition. Suppose the consideration immonest as C. g. a bill given in consideration of perjury. Such Bill is void at C. L. But if it is transferred to a 3^d person & he permitted to receive upon it, the object of the Law will not be defeated. The party will be obliged to pay the money but to an honest man. But the object of the Law would be defeated if the original party was permitted to receive upon it. The Law is not intended to injure a 3^d person, but to prevent a Scoundrel from being paid for his iniquity. So where a Bill is drawn in consideration of committing murder, the C. L. declares such bill void. & so it is so far as respects the original parties - but it is good in the hands of a subsequent bona fide holder. This contention, I trust, will be found to run through all the Cases. -

Lex Mercatoria.

Bills of Ex. & Prom. & Accept.

I do not apprehend that our text writers have laid down the distinction correctly, when they say that where a Statute Law prohibits there can be no recovery - You suppose a Statute makes that unlawful which was not at the Law - now if a Bill is made on ^{such} consideration & transferred for a valuable consideration, I have no doubt but it may be recovered by a bona fide holder. Suppose e.g. a Statute is made prohibiting murder which was also prohibited by C. L. & a Bill is drawn in consideration of the commission of this crime. The bill is doubtless void in the hands of the original parties to it - but there is no doubt if the Bill is transferred but that it may be recovered in the hands of the bona fide holder. -

This course of reasoning is also fortified by another consideration, viz. - that where the Statute Law declares the Bill void there may be a recovery as between the indorser & indorsee - e.g. A draws a bill on B. & an unusual consideration - Now the Statute declares such bill void & no recovery can be had upon it as between the original parties - but if it is negotiated to C. he may recover of the endorser. - B the indorser is not intended to be protected -

The object of the Statute is to protect B the Drawer of the Bill & the borrower of the money, & yet that if C. indorses it to D. the 2^d indorsee may recover of C. the amount. The reason is, the man who is intended to be prevented by the Statute is not D. I have made these observations because I conceive there is no mystic difference between a Statute & a C. L. prohibition. If a Bill is declared void by Statute, it is so, & equally so, if declared void by C. L. I Mar 11 55. - Dec 7 1816. -

Mr. Colclough lays down a rule as between an indorser & indorsee which is manifestly incorrect - it is - that the innocent in-

Lex Mercatoria.

Bills of Ex. & Prom. & Notes,
 indorsees may recover of him only of whom he received the Bill. Having
 no authority for this rule, & I apprehend there is none. 1 East 122.
 It is true where a Bill is trans. made by manual delivery only, the
 holder can recover only of the person, of whom he received the Bill. &
 Had Mr Chitty laid down his rule with reference to this case & not
 to cases of illegal consideration, it would no doubt have been correct.

On the other hand - if a Bill which is good in its Creation,
 & endorsed for an illegal consideration, & then passed to a bona
 fide holder, for a valuable consideration - he may recover ^{of the Draw}
 and on acceptance - but not ^{of the indorser}, for the indorser is the person
 who is intended to be protected by the Statute against the wrong.
1 East 122. - 1 Sand 294. - 4 T. R. 390. - 1 Esp. N. 273. -

In every Bill the Drawers name must be subscribed or insce-
 red in the body of the instrument - & it must be thus subscribed
 or inscribed by the person purporting to be the Drawer, himself -
 or by some person by him authorized to do it - as an agent. Doar-
L. M. Plact. 3 - L. Ray? 1376. - 1542. - Stra 399. - 609. - 4-
Mod 307. - Chitty 55-6. -

With regard to the Construction of a Bill of Exchange,
 I have to observe, ^{that it} is very liberal - more so than the construction of
Deeds. Therefore where one, for money acknowledged to have been re-
 ceived in the body of the instrument, gave a promissory Note,
 concluding thus "and which I promise under to pay" it was decided
 he should pay - for it was manifest it was a more trick or at least
 an error. The intention of the Parties was evident, that the
 Note was to be paid. This is giving words a very liberal signifi-
 cation. 2 Will 32. - It is upon this same principle of liberal

Lex Mercatoria.

Bill of Ex. & P. 1. 1. 1.

construction, that a Bill payable to a particular person or persons, and under certain circumstances effectual as a bill payable to bearer. In the latter.

In general the Contract entered into or evidenced by the Bill of Exchange, is construed & its effect according to the Law of the Country where made. In other words the lex loci contractus. As when a bill was made in Leghorn & sued in Eng. It was proved that there had occurred certain events which according to the laws of Leghorn would discharge Delt. He was discharged from the payment altho in England where the action was brought these events had no such effect as to discharge him. Stoa 723. - 1 Bos & P. 141. - 2 Bos jr 447. - 2 H. Bl 603. - 19 L. 125. - 7 L. R. 242. -

There is an Exception to this rule with respect to the time of payment mentioned in the Bill. This is only to be calculated according to the Law of the Country where the Bill is payable. Thus if a bill is drawn in London, payable in Amsterdam "at two months," the time of payment must be regulated according to the Laws of Holland with respect to this issue. The Trierer must respect the Law of the Country where the bill is payable. Bos L. M. Plact. 251. - Chitt 59. -

As to the remedy upon a Bill of Exchange, the form of it is to be regulated according to the Law of the Country where sought; but the substance of it, is to be according to the Law of the Country where the Bill is made. - The reason of the rule as it respects form is clear - for were it otherwise it would introduce into Courts of Justice the greatest confusion. E.g. Suppose a Bill drawn in Algiers is sued in Eng. - the action must be affirmed it on Delt - (Delt is not often brought). & the trial proceeds according to the Law of Eng. upon this subject. Now suppose the substance of the proceeding was to be regulated according to the Law in such case in Algiers which was E.g. for the Trierer to give his mandate, concerning the Delt in a

Lex Mercatoria.

Bills of Ex. & Prom. & Notes.

dungeon, in Iron, & deny him the privilege of a trial by jury &c. -
 A proceeding of this nature would be entirely new in the City of
 Westminster Hall, & productive of much confusion & mischief.
 But still the Extent of the right is to be regulated according to the
 Law of the Country where the bill was made. 1 Bos & Pul 134. Chit-
 ty 60. - 2 Blk C. 154

A Bill when drawn, must to take effect be regularly deliv-
 ered to the Payee. This is a requisite applying to all legal instrum-
 ents. And a person receiving a Bill in satisfaction of a Debt, for
 which he has not a higher security cannot regularly sue for the Debt,
 until the day of payment on the bill - because by receiving the Bill,
 he impliedly gives credit until the Bill is due. 12 Mod 517. - 6 T.
 R. 52. - 7 H. 64. - 5 H. 513. - 1 Esp. R. 106. - Com Dig. tit. "Merchant-
 " § 17. - Chit. 51.

If a Bill is altered while in the hands of the Payee or hold-
 er, in a material part, as in the date, sum, time of payment &c. - &
 this without the Drawer's consent, - he is discharged from the payment
 even ^{yet} to a subsequent bona fide holder. For altho the Law intends to pro-
 tect these instruments, & frequently obliges the Drawer to pay a subsequ-
 ent bona fide holder, when he could not be compelled to pay the origin-
 al party - yet the Law cannot ^{so} far as to compel a man to pay an in-
 strument which he never made - It is not his act & deed. It is a forgery,
 & the holder, however innocent he may be, can never derive a title
 through forgery. It is also a rule that the holder must run the risk
 of the genuineness of the bill - the certainty of which he may ascer-
 tain by enquiry. After alteration in a material part the Bill is not
 genuine. - 4 T. R. 320. - 5 H. 367. - 2 H. Bl. 141. - 1 Anderton 220.

The rule is the same as to an auction where the alteration is made

Lex Mercatoria.

after acceptance, & also in respect of indorsement where made after endorsement, i.e. in both these cases the parties are discharged & no recovery can be had against them.

But the rule is different in case of a subsequent bona fide holder, where the Bill is altered in one case before acceptance & in the other before indorsement. As e.g. a bill is originally drawn for £100 and is altered before acceptance to £50 off - the Drawer and its Agent - He is bound to pay the amount tho the Drawee is not. The party altering however can never recover. - See M. Planters 194. - you will find this doctrine in author last cited also & in Chitty 63. -

But the consent of every party to the Bill will stop him from taking advantage of the alteration - if after the bill is accepted the Drawer consents to its alteration he is liable - tho the acceptor is not. 4 T. R. 320. Chitty 63. -

The party thus making an unauthoritable alteration in a material part, can never recover of any one. It is a forgery & he who commits it has no right of recovery in any case. 10 Co 27. -

The remarks I have thus far made, have necessarily been miscellaneous. - I shall now proceed to treat -

of the obligation incurred by the Drawer.

The Drawer by the very act of drawing & delivering the Bill implicitly engages with the Payee & with every subsequent bona fide holder

1. that the Drawee is legally capable of accepting the Bill.
2. that he is to be found at the place described in the Bill.
3. that on due presentment, the drawer will accept it, ^{according to tenor & if required in writing} & that on presentment for payment that payment will be made. -

Lex Mercatoria.

Bill of Ex. & Promiss. &c.

The Drawer enters into these implied engagements not only with the Payee - but with every subsequent bona fide holder - for the bill is to be payable to order or bearer - & the obligation follows the bill, wherever it may come, & there will be successive stages of negotiation. Thus if by a Promissory Note I engage to pay A. B. or order, I not only engage to pay A. B. but any person into whose hands the Note may ever be negotiated. Ryd 109. Doug 55. 2 H. Bl. 378. 1 Esp. R. 511. L. Ray? 7. Str 1087. Chitty 63. 4. 70. 71. 72. —

The Payee however may agree to assume these risks & then there is no such implied agreement in his favor - But any subsequent bona fide holder not knowing of this assumption will not be affected by it - for if so, he might be defrauded - & the rule is said to be the same where the Drawer discounts the bill, i.e. disposes of it by way of sale. — Chitty 125. 109. 3 T. R. 757. 1 Esp. R. 447. 7 T. R. 65. 6. —

If there is a failure of any of the engagements just mentioned the drawer is liable immediately, altho' the day of payment on the Bill has not arrived. For whenever an engagement is broken there is then an immediate right of action. He is liable immediately for the amount of the bill & in some cases for damages & costs. E.g. Suppose a Bill is drawn payable in one year - & the Drawer is legally incapable of accepting the bill, the Drawer may be sued immediately - & so if there is a failure of any other of the implied engagements. — 2 H. Bl. 379. Doug 55. Dear L. M. 469. Chitty 64. 100-136. 1 Bos 669. 5 H. Bl. 1687. 6 T. R. 52. 139. 3 W. L. 16-17. —

The Drawer incurs these implied obligations whether the Bill was drawn on his own account or that of another - & the obligation continues even tho' the Drawer should be prohibited by the Laws of the foreign country to accept the Bill - & thereby rendered incapable of accepting.

Lex Mercatoria.

39

The Drawer assumes this risk, whether the Law will permit the Drawer to ac-
cept. Boar 469. - Ryd 110. - 2 H. Bl. 378. - Ryd 117. 156. - Chitty 64. -

The holder however may lose the benefit of all these obligations on the part of the Drawer by his own negligence. In what manner he may lose them I shall explain hereafter.

I would observe by the way that to entitle the holder to the benefit of these engagements (in his favor) on the part of the Drawer, the holder must do his duty - he whose presentment to the Drawer is necessary - the holder must present the Bill this is one part of his duty. And here I have to observe that in some cases presentment is necessary and in all cases expedient where the holder receives the Bill before acceptance.

When the Bill is payable within a limited time after sight presentment is absolutely necessary. The holder can never entitle himself to a recovery on such a bill until after presentment for acceptance - for unless this is done, the day of payment will never arrive. 1 H. Bl. 565. - Chitty 67. 46. 202. - Ryd 117. -

But in other cases it is not necessary this is general advantageous for the holder to present the bill, till it becomes payable. It is always said to be advantageous because it is the safer course - but it is not an act of justice due from the holder to the drawer or any other party to the bill - but it may under a recovery on the bill more certain & easy and therefore it is advantageous. - Boar 2. H. Bl. 266. - 1 T. R. 712. - 5 Dec. 2670.

Ryd 114. - 2 Shon 496. - Con Di Merhit 56

And even where the general rule makes it necessary for the holder to present for acceptance, he may excuse his omission to do it, by proving that the Drawer (or other party) had no effects of the Drawer (or other party) in his hands; or by proving that the Drawer was insolvent, & this fact known to the Drawer or other party sued. So also he may excuse the omission to present by proving any fact in general which shows the fact.

Lex Mercatoria.

Bill of Ex. & Prom. & Bils.

party need be injured by the omission to present. 2 H. Bl. 336.
508. Ch. 1042-132-202-203.

Suppose the Bill is made payable at a certain time after sight & the holder does not present the same for acceptance & then makes a claim on the Drawer, The Drawer says I am not liable - for you have never presented the Bill to the Drawee, & he is always first liable - & according to the general rule, the Drawer is not liable. But the holder may reply, it is true I have never presented the Bill - but I can prove you had no effects in the hands of the Drawee, & therefore no credit with him - on the Drawee is a notorious bankrupt & you well know this fact. Now here the holder can recover of the Drawer for there is no injury occurring to him by the holder's omission to present the bill for acceptance. The excuse is sufficient.

The use of presenting a Bill is that in case it is not accepted, on notice of its being given to the Drawer he may recover the effects out of the hands of the Drawee - but here the Drawee has no effects of the Drawer in his hands & therefore he cannot be injured by the omission to present. In either case the holder is excused for his omission, tho' the general rule might require it. ~

March 12. 1819. Lecture 5th ~

I have already observed that where a Bill is payable at a given time after sight, presentment for payment is indispensably necessary - otherwise the day of payment will never arrive. The rule as to the time of presentment in such case is, that the holder must use due Diligence - or in other words he must present the Bill in a reasonable time according to the circumstances of the case. ~

And here I have to remark as before that what is a reasonable time, is before the facts are ascertained a mixed Question - but they being ascertained it then becomes a Question of Law. Hyd 117. 118. 2 H. Bl. 5.
69. - 7 T. R. 425. - 1 T. R. 167. 519 - 4 T. R. 144. - Doug 515 - Barr L. M. Plact. 229. ~

Bill, of Ex. & Prom. Notes.

Mr. Chitton, too by evident mistake lays down the same rule with respect to a Bill payable at sight - i.e. he says such bills must be presented for acceptance within a reasonable time, But this is certainly incorrect, for it is never necessary to present a bill for acceptance which is payable at sight, for by the terms of the bill it becomes payable the instant it is presented. It is true when a Bill is payable at sight it must be presented for payment within a reasonable time & this is the way in which the rule should have been laid down, viz. that such bills should be presented for payment within a reasonable time. Chitton 67. 68. —

Presentment should always be made within the usual hours of business - otherwise it is not deemed legal & the Drawee not bound to accept and indeed the holder not presenting within the usual hours of business is considered not as doing his duty. Id. 125. Chitton 69. 144. —

But a neglect to present within the proper times may be excused by the illness of the holder & as the case may be, by other causes. same au.

It seems in strictness the Drawee should accept or refuse immediately on presentment. - It is usual however to leave the Bill with him 24 hours that he may have an opportunity of examining the accounts between him & the Drawee, unless the Drawee voluntarily accepts or refuses sooner. And if the Bill is thus left, & not accepted within the time, it may be considered as dishonored. L. Ray. 246. Bower L. M. Pl. 17. - Com Di. to "Merchant" L. 6. - Ryd 126. - Chitton 70. 72. —

But tho' it is usual to leave the Bill 24 hours with the Drawee, yet the holder is not justified in doing this, if the Mail by which the notice of non-acceptance is to be sent, goes out in the mean time. In such case he must insist upon acceptance or non-acceptance before the mail's departure, so that (in case of non-acceptance) he may give notice to the Drawee. Com Di. Supra. - Chitton 70. —

Lex Mercatoria.

By the Drawer is not to be found at the place described in the Bill, or it is ascertained that he never resided there - or has resided there had absconded - the bill in either of these cases is considered as dishonoured. For you recollect one of the implied engagements on the part of the Drawer is that the Drawee is to be found at the place described in the Bill. - 1 Exp R. 516. - L. Ray? 7. 749. - Bower Plac. 2. 2 to 29. - Hygel 12. - 127. - Chitty 70. 49. 128. 136. -

But if the Drawee having resided in the place described has removed to another, but has not absconded, presentment should be made at the place to which he has removed - & in such case the Bill is not considered as dishonoured. And presentment should be made if possible to the drawee in person - but if he cannot be found by due diligence the holder is not bound to present to him personally - as suppose he has left the State or Kingdom, the holder is not bound to follow him - in all cases presentment at his house is sufficient if he cannot be found by due diligence whether he has left the State or not. - Stia 1047. - 1 Exp R. 511. - Chitty 70. 135. 136. -

If the Drawee is dead, presentment is to be made to his personal representative, if the latter is to be found within a reasonable distance. If the representative is not within a reasonable distance, presentment made at the last place of abode of the Drawee will be sufficient. Pothier 146. - Chitty 70. 11. 132. 133. -

And what is a reasonable distance, I conclude is a Question of Law, in the same sense that a reasonable time is a Question of Law. I do not find this rule expressly laid down, but I have no doubt of its correctness. I have therefore been mentioning of presentment for acceptance - I shall now proceed to consider the - Acceptance - itself -

Lex Mercatoria.

41

Bill of Ex. & Import Notes.

Acceptance is the act of engaging to comply with the request contained in the Bill, i.e. agreeing to pay it. And this acceptance may be in writing or by Tacit. Chitty 71. 72. 76. 200.

Acceptance by the Agent of the Drawee is valid and will bind the principal - but the agent if required by the holder must produce his authority, else the Bill may be considered as dishonored, for the holder cannot know that the Agent is authorized to accept. And it seems questionable whether the holder is ever obliged to acquiesce in an acceptance by an Agent, because it multiplies the necessary proof - & I think he is not bound to acquiesce for another reason, which is that the instrument has reason to be the Agent's authority may be fraudulent - or a forgery & the holder ought not to be obliged to run this risk. But if he does acquiesce the principal is bound if the Agent acted under his authority. Chitty 71. 72. 23.

Dowd. Plac. 47. - 1 Esp. R. 115. 269.

Acceptance by one partner for both or for the Firm, binds the Company. But if a Bill is drawn on 2 persons, who are not partners, and accepted by one only; tho' in the name of both, yet the person not accepting is not bound for he is not a partner, & the person accepting is not able to bind him who does not accept - For tho' by drawing a Bill two persons may make them selves each partners, so that a negotiation of it by one in the name of both, will bind both, yet here they are not partners and one cannot be subjected as such by the act of another who is a Stranger. - In this case the holder is not obliged to acquiesce in such acceptance - but may consider the Bill as dishonored. B. N. P. 224. - Holt 297. - Bower 224. - Chitty 29. 73. 112.

If the Drawee is an Agent, or Firm correct, on a ground

Lex Mercatoria.

Bill of Exch. Prom. & N.D.

otherwise incapable of accepting, the Bill may be considered as dishonored, and need not be presented, because by the supposition the Drawer is legally incapable of accepting. This rule follows from the one before laid down, that the Drawer impliedly engaged as to the Drawee's legal incapability to accept the Bill. Chitty 62. 71. 2.

And a promise to accept in future may operate as a present acceptance, even tho' it is by Parol. Thus where on presentment, the Drawer said to the holder "leave the Bill, & I will accept it," it was held to be a present acceptance, because it gave credit to the bill & prevented the holder from protesting it. D. N. P. 270. - Corp. 573. - 3 Bur. 16. 69. - 1 Attk. 64 on 44. - 5 East 514. -

Indeed it is a general rule, as you will find from the Authorities last cited, that an unconditional promise to accept in future is a present acceptance - And a promise by the Drawer to the Drawer to accept a Bill which may be drawn hereafter upon him is binding, if attended with any circumstances which would induce a 3^d person to take it, else such promise might operate as a fraud upon 3^d persons. As where the Drawer wrote to the Drawer to know whether he would accept a Bill, & the Drawer answered that he would duly honor the Bill, & the letter containing this answer was shown to a 3^d person which induced him to take the Bill. It was held the Drawer was bound by the promise to accept, otherwise ^{his} 3^d person would be defrauded. But I have doubt this would not have been considered an acceptance as between the original parties. Corp. 571. 572. 574. - 1 East 94. - Ryd 74. 41. Dares 454. 466. 1 Attk. 64. 611. 715. - 3 Bur. 1662. - Chitty 44

Acceptance after the day of payment will bind the acceptor, yet in such case the Drawer or endorser will be discharged unless duly notified of nonacceptance. & nonpayment at the day of payment.

Lex Mercatoria.

(Bill of Exchange & Promissory Notes)

If the Bill has never been presented for payment until after the day has elapsed - the drawer or endorser is discharged of course, for the holder has not used due diligence - he has been guilty of neglect. - 12 Mod 410. - Chitty 73. 74. 41. -

And in such case the acceptor is liable to pay on demand whatever time the Bill had to run. It cannot then according to the nature of the case be payable according to the tenor of the Bill, for the day for presenting to be the time of payment on the face of the Bill has elapsed. L. Ray. 264. 574. Salk 127. 129. Carth Hb. Com R. 75. 12. Mod 410. -

Under the English Bankrupt Laws, the Drawee tho' having effects of the Drawers in his hands, is not safe in accepting the Bill if he know ~~of~~ of the Bankruptcy of the Drawer - for the effects in his hands are now the property of the Assignees & if he accepts after knowledge of the Bankruptcy, he will be compelled to pay the Bill - & also to pay to the Assignees the amount of the Bankrupt's property in his hands.

But if he had no notice of the bankruptcy at the time of acceptance he will not be obliged to pay the Assignees - & even if he has not paid the bill but only accepted it, still the Assignees cannot draw the Bankrupt's effects out of his hands - for after acceptance he is bound to pay at all events, & the effects of the Drawer he must be allowed to retain (i.e. sufficient) to secure himself. 2 H. Bl. 333. - 7 T. R. 711. - Chit. Ag 74. 152. -

The acceptance of a Bill may be either absolute, conditional, or partial. But the holder is not bound to acquiesce in any acceptance other than an absolute one - and any other acceptance he may consider as a dishonoring of the Bill. But if he is willing to acquiesce in any other acceptance the acceptor will be bound by it. - Edlin 17. Chitty 24. 74. 103. 140. -

If the holder is satisfied with a conditional acceptance or

Lex Mercatoria.

one varying in any way from the tenor of the Bill - it may be so accepted - & then if he gives due notice of such acceptance to the prior parties they will be bound. But if he takes such acceptance & does not give notice to the prior parties - he can have no claim on them - they are discharged. The reason is, the drawer is entitled to this notice that he may withdraw his effects out of the Treasurer's hands - & the indorser is entitled to notice that he may have the same chance of the Treasurer on any former indorser. - Stoa 214. 6 & 4. 1152. 11-24. 1212. Comb. 452. 2 Wil. 4. 1 P. R. 142. -

And what amounts to an acceptance is a Question of Law - Exactly in the same sense as what is a reasonable time is a Question of Law. 1. T. R. 142. - 146. - Chetty 75

An absolute acceptance is an engagement to pay the Bill according to its tenor, & when a Bill is generally accepted, without any qualification, it is an acceptance according to the tenor of the Bill. But it is unnecessary from the acceptor expressly to say he accepts according to the tenor, it is an absolute acceptance if without qualification. Fryd 74. - Chetty 74. -

I have observed that an acceptance may be by Parol but this is not usual nor is it safe, because the Evidence of a Parol acceptance is much more precarious than an acceptance in writing. The usual mode therefore is to accept in writing. Kyd 74. Chetty 75

The form of acceptance is usually thus - "accepted" & subscribed by acceptor name. And if the word "accepted" is written without signing his name, it is good - or it may be done by signature without any thing written over it. Chetty 73. 75. -

When a Bill is made payable in a City generally, i. e. without specifying any place, it must by acceptance be made payable

Lex Mercatoria.

45

Bills of Ex. & Prom? Notes.

at a particular house or place in the City, or the holder may protest it. — You are not to understand by this that the acceptor will not be bound unless a particular place is designated — but the meaning is, the holder is not bound to acquiesce in the acceptance unless the acceptance will designate the place where the Bill shall be paid. L. Ray. 574. — Com. R. 75. —

The reason of this rule is obvious. Suppose the Bill is payable in the City of London — Now if he were not allowed to claim the right of having the place of payment specified in the acceptance, the holder would be subjected to much inconvenience, for as the case might be, he would be obliged to travel an indefinite length of time over this miniature of the world in search of the acceptance. It is for the convenience & security of the holder that he may claim such a specific acceptance. —

I have stated the usual mode of acceptance, but in general any act of the Drawee, evincing his consent to comply with the request in the Bill, will be a sufficient acceptance. Thus where the Drawee wrote "seen" on the Bill it was holden an acceptance — So also in another case where he wrote "presented", and in another where he made a memorandum of the day of the month on the Bill, and in another where he wrote a direction to a third person to pay — there were all considered a good acceptance; and any thing of this nature will amount to an acceptance altho' written on different piece of paper, if it relates Expressly to the Bill. Com. R. 416. B. N. P. 270. — Hyd. 40. — bin. al. ti. "Bills of Ex." §. 4. —

And a verbal acceptance tho' it is without consideration, is binding in favor of the holder of the Bill. tho' ~~it~~ between the Drawee & acceptor the want of consideration may be averred, & I understand the rule to be the same where the acceptance is in writing. — 3 Bos. 1669. Chitty 77. 42. —

But a promise to accept obtained by fraud or misrepresentation

Lex Mercatoria.

Bills of Ex. & Prom. ? & c.

misrepresentation does not bind the acceptor. But this rule I trust is confined to the person who practised the fraud. I cannot conceive it extends to a subsequent bona fide holder, for if it does the great principles of the mercantile Law will be defeated & destroyed. It is very important on a commercial point, viz. that the Bill should not be impaired in the hands of an innocent holder, by the transactions of prior parties; & the general principle of the C. L. comes to this, for which is the most reasonable, that the person who ^{owed} ~~suffered~~ himself to be deceived should be the loser, or an innocent holder of the Bill who was wholly ignorant of the transaction? Clearly the former according to the C. L. principle. Chitty 77. - D. Bar 1669. -

It appears from what has been said, that the acceptance need not be made on the Bill itself, it may be on a separate piece of paper, & an acceptance by letter will undoubtedly bind. Floyd 79. - Stra 640. -

And an acceptance may be implied, & even where there is no writing in the case. But to constitute such acceptance, there must be some act or circumstance from which it may be inferred that the holder was induced from that act or circumstance to accept the Bill as accepted. Thus where the Drawer said to the holder "there is your Bill, it is all right" the rule laid down by the Ct. was, that if by this expression the holder was induced to believe the Bill accepted he should recover, ^{see 115} ~~see~~ if otherwise. (See how did the Ct. decide? L. T.). - 1 Esp. R. 17. - Chitty 76. 77. 78. - Hardw. Cas. 75. 274. - 1 T. R. 269. -

But an acceptance may be implied from the Drawer's keeping the Bill a great length of time, tho' this implication may

Lex Mercatoria. —

47

Bill of Ex. & Prom^t. Notes.

may be rebutted, as if the Drawee had been taken suddenly sick so that he could not in any way attend to Business, & thereby prevented from answering the Bill in due season. This will rebut the implication. It is not however in general easily rebutted — but in cases at Supra it is. Such neglect & return is considered prima Facie an acceptance. 10th 6th. — Hurd. —
Car 274. — Chitty 77. —

And in general any act which gives credit to the Bill & induces the holder not to protest it, will amount to an acceptance. This is of course an implied acceptance. B. & F. 270. — Ryd. 40. —

An engagement to pay the Bill not absolutely, but on some contingency, is called a conditional acceptance. The holder is not bound to acquiesce in such an one, but if he does, he must give notice of the nature of it to the prior parties else they will be discharged. The reason of this, I have before explained. But tho' the holder is not bound to receive such acceptance, but receiving it if he neglects to give notice to the prior parties they are discharged, yet the acceptor is bound by the acceptance if the holder does receive it. Bethes. —
Placitum" 47. — Ryd 161. — Chitty 2 D. 74. 75. 79. 80. 81. 102. 140. —

For Example, where a Drawee accepts in this form, "accepted on account of such a Ship when in Bark on her Cargo." This is a conditional acceptance; or when it is thus "accepted when goods & are sold" it is conditional, & the holder is not bound to receive such acceptance, but the acceptor is bound according to the terms of it if he does receive it. Stoa 1152. 1212. — 2 Wils. 9. — 12 Mod 477. — Comh. 5. —
71. — 1 T. R. 142. —

Here by the way I would observe (because it may occur to you that the last rule is inconsistent with one formerly laid down viz. that the Bill is to be paid at all events & not upon a contingency,

Lex Mercatoria.

Bills of Ex. & Prom? *Notes*

~~General~~^{that} the Bill is still payable at all events. If the Drawee refuses to accept the Bill at all events, & not upon condition the holder may resort to the Drawer, & he is at all events liable. This rule is satisfied if the Bill is originally drawn payable at all events, for if the Drawee refuses to comply with the request contained in the Bill, according to its tenor, the Drawer is *ipso facto* liable. The Drawer is not bound to accept absolutely - but he is bound to pay according to his acceptance. Such conditional acceptance becomes absolute however as soon as the contingency on which it depends takes place. E.g. if the Drawee accepts to pay as soon as such goods are sold - such acceptance is conditional; but it becomes absolute whenever the goods are sold. Stoa 212. - Comp 571. - 1 T. R. 142. -

If the acceptance is in writing, the condition intended should also be in writing, for a mere condition annexed to a written acceptance, will not avail the acceptor as to a subsequent bona fide holder, if he or any intermediate bona fide holder took it without notice of the condition. For otherwise an innocent holder would be defrauded by a private verbal condition of which he was totally ignorant. Doug. 246. or 296. - Herd. 1-2-3. - Chit. by 41. -

A Partial acceptance varies from both of the former. This is an unconditional acceptance as far as it goes, but varying from the tenor of the Bill. It is not an engagement to accept the bill upon a contingency - but an absolute acceptance varying, as I before said, from the tenor of the Bill. This is the Drawee accepts to pay part of the Bill, or to pay it at a different time or place, or in a certain way different from that specified, it is a partial tho' an absolute acceptance as far

Lex Mercatoria.

49

Bill of Exchange & Promissory Note.

It goes. Stoa 214. Comm. 452. 11 Mod 190. Sha 1194. ~

This species of acceptance also, is one which the holder may refuse, & treat the Bill, as dishonored. But if he does receive it the acceptor is bound by it, & he must give notice to the prior parties of such acceptance else they are discharged. Chitty 41-2. ~

And here I would remark - that if upon a conditional or partial acceptance the holder gives the prior parties notice of non-acceptance generally, he waives the acceptance, because by giving notice of non-acceptance generally he shows he does not acquiesce in it such as it is, & besides by so doing he gives notice to the prior parties with an inducement to secure^{re} themselves. - He cannot therefore give this general notice of non-acceptance & avail himself of the partial acceptance besides. 1 T. R. 182. - Chitty 42. 45-157. ~

Whether an acceptance is absolute, conditional, or partial, is a Question of Law. ~

March 13. 1813. Lecture 6th. -

You will perceive from what has been said that by an absolute acceptance the Drawee is bound to pay according to the tenor of the Bill - and by a conditional or partial acceptance he is bound to pay according to the tenor of such acceptance. 4 T. R. 174. ~

An acceptance is binding in favor of a 3^d. person, i.e. anyone besides the Drawee, tho' made without consideration, & altho' the fact was known to the holder. It is of no concern as respects an endorsee whether there was a consideration or not between the Drawee & Drawee making to the latter. He is not bound to Enquire, & even if he knows there is none it will not affect him. - 1 Wils 14-7. 188. - 3 T. R. 143. - 4 H. 339. ~

And hence an acceptance by the Drawee's Executor

Lex Mercatoria.

(With of Ex. & Prom. & Notes.)
 will bind him tho' he has no assets, i.e. it will bind him in favor of
 a 3^d person, but not in favor of the Drawer. If the Executor
 has no assets, he will be personally liable. The in ordinary cases,
 the Executor is not bound unless he has assets, yet in these mer-
 cantile instruments he is bound by his acceptance whether he has
 assets or not. His character as Executor, is not regarded but he
 is liable as any other person would be. Indeed an acceptance on
 the part of an Executor, is an admission that he has assets to that
 amount, & he is precluded from ever afterwards averring that
 he had no assets, & this whether his acceptance is in writing or by
 Parol. This is not paying the debt of another, for the acceptance
 creates the Debt, there was none before. And an indorsement
 by an Executor is the same thing. To be sure he may ever want
 of assets as between him & the indorsee, but he is estopped from
 doing this as is a third person. It is here also an admission of
 assets. 2 H. Bl. 622. - 3 Wils. 1. 2 Stra 1260. - 2 Bus. 1225. -
1 T. R. 447. ~

The obligation created by an acceptance is irrevocable.
 This does not vary from the rule common to all contracts. -
 After acceptance he cannot be discharged in general other-
 wise than by a satisfaction - or by an express waiver on the
 part of the holder - as e.g. by a release. Exp. W. 47. - 1 H. Bl.
48. Chitty 43. -

If the acceptance is made in foreign country, by
 the Law of which it originally is, or afterwards becomes invalid,
 it is of no force in any other country. Stra 733. Chitty 59. 64.
43. - If you e.g.

But an acceptance may be waived or released by

Lex Mercatoria.

51

Bill of Ex & Prom? Note.

A bare Parol agent of the holder without Deed or even any writing. I hardly know (says Mr Gould) how this rule has been introduced into the Mercantile Law. For it is well known according to the principles of the Common Law, that when a right of action has accrued, the by parol, yet it cannot be released otherwise than by Deed. - The rule is well settled however. Exp. Di. 47. - Chitty 82. 197. - Dang. 247. on 226. -

It has been said in one case, that what amounts to an agent or agreement to discharge the acceptor from his acceptance is a Question of Fact for the Jury to determine. This opinion is shaken by others - indeed it seems to be overruled, for it has been decided that nothing short of an Express agreement will amount to a discharge - & what is an Express agreement is a Question of Law. It is true the Question whether the holder "I will discharge you", or "I do discharge you," or whether he gave a release or not &c. is a Question of Fact - but this being ascertained, it is then a Question of Law whether there is an Express agreement to discharge or not. Dang. Supra. - Chitty 44. - Exp. Di. 47. - Ryd 159. -

If the holder of the Bill Executes to the Drawee a release after the Bill is drawn but before acceptance - this does not discharge the subsequent acceptance. Because a release operates only upon an Existing liability. But in this case when the release is Executed there is no Existing liability - for he has not at that time accepted the Bill. L. Ryd? 65. 518. 519. 664. - 5 Co 70. 6

A Parol agreement however between the acceptor & the holder to consider the acceptance as at an End, has been considered as a

Lex Mercatoria.

Bills of Ex. & Prom. & Notes.

Partial release or partial discharge. The term "partial discharge," may occur to you as improper, for in Law a "discharge" can be by Deed. The meaning of it is, that it amounts to a Partial release, - And again when the holder sent a message to the acceptor "that the business was settled between him & the Drawer & that he need give himself no further trouble." It was decided to be a release of the acceptor. Wong. sup. -

And an Entry in the holder's Books, opposite to the entry of the Bill in these words "As acceptance annulled," was considered as a discharge of the acceptor. Wong. sup. -

It has been a subject of Doubt, whether the holder taking a part of the amount due from the Drawer, and taking his (the Drawer's) promise to pay the residue (on the back of y^e Bill) at an enlarged period of time, discharged the acceptor. I can see no proper reason, why it could ever have been imagined the acceptor was discharged? If the holder on receiving part of the amount from the acceptor, had given him an enlarged time to pay the residue, the Drawer doubtless would have been discharged. The acceptor liability is first, & the Drawer's is secondary. The acceptor in both cases is likely to be benefited by having the period of payment enlarged, but in the latter case, the Drawer is not benefited, for the acceptor, before the period agreed upon as the day of payment should arrive, may become bankrupt - it is on this reason - that in the latter case the Drawer is discharged. But giving this enlarged time in the case supposed is so far from proving injurious to the acceptor, that in all probability it will be for his advantage. And how it can be said that that which

Lex Mercatoria.

Syll. of Lex. & Princ^l notes

will operate for his advantage can discharge him from his liability I cannot tell. Doug 248. - Whitty 44. 156. 157. - 2 Wils 262. - 4 Crp R. 517. -

It has been determined that the alteration by the holder of a partial into an absolute acceptance, and on refusal of payment, another alteration restoring it to its original form, does not discharge the acceptor. This is going very far, and were it not for the anxiety the Law has to keep up the Credit of these mercantile instruments, & to protect 3^d persons, I am confident the rule would never have obtained. No injury can perhaps result from it, but it is contrary to the rule of the Common Law that a person altering a writing of any kind in a material part, he cannot recover upon it. Here the acceptance as restored, is not in fact the act of the acceptor. His acceptance has once been forced, one of a different kind substituted, & then one similar to the actual acceptance of the Drawee put upon the Bill, & this by the holder. - The rule is however established upon pretty good Authority. See Bones Plaintiff 222. - Molay 24. - J. R. 336. - Whit 45. -

When a future consign^{of goods}ment is to the acceptor & a prospect of profit from it is the consideration of acceptance, the holder agreeing & actually taking a bill of Lading from the acceptor is a discharge of the acceptance. The consideration of acceptance being removed, & that by the act of the holder himself - he has no right to complain that the acceptance is discharged. - Whitty 45. -

And where a holder agreed with the acceptor that if he would make affidavit that the acceptance was forged, he would not sue him, & he did make the affidavit, it was held that the acceptor was discharged, altho' the affidavit was false. the condition on which the holder agreed to discharge the acceptor was performed, & it was immaterial whether the affidavit was false or true, Pick R. 187. - Exp. R. 70.

Lex Mercatoria.

Bills of Ex. & Prom. & Notes.

And a conditional or partial acceptance is discharged, by the holder sending notice to the proper parties of a general non-acceptance. I gave you this rule in a former lecture for another purpose. 1. R. R. 182. —

If the Drawee by his acceptance, makes the Bill payable at a particular house, or at a Banker, & the Bill is not then presented for payment, the acceptor is discharged, provided he would be injured in consequence of the Bill not being presented for payment at that particular place. Suppose a bill is accepted to be paid at a Banker, & the holder neglects to present ^{it} there, & the Banker fails — Now the acceptor is discharged, for otherwise he might be demanded — as considering that the holder would comply with the terms of the acceptance, he has been induced to suffer ^{on the honor of} his money, which he has appropriated for the payment of this Bill to remain in the Banker, & the Banker has failed. If he were not discharged then, he would be a loser to the amount of the Bill, & this thro' the negligence of a stranger. 2. Stran 1195. —

The act of acceptance, when there is nothing in the terms of it to contradict it, implies that the acceptor, has in his hands effects of the Drawee to the amount of the acceptance. — If then the Drawee is afterwards compelled to pay the Bill, he may recover of the acceptor. This rule presupposes that the acceptor is unable to prove he had no effects of the Drawee in his hands. Baver. 455 — 1 Wils. 145 — Salk 130 — 1 L. Ray. 244 Fyde 156. —

If however, the acceptor, in point of fact has no effects, but pays the Bill, he has a remedy vs the Drawee, but the onus probandi as to the fact of his not having effects lies upon himself, i.e. the acceptor.

Lex Mercatoria.

55

Bill of Ex. & Prom. Notes.

Ryd 156 - Chitty 163-191. 203. 205 - - - Abs -

As to all the other parties, i.e. all except the Drawer, the acceptor is considered as the original Debtor - the person first liable. This will appear manifest upon considering the nature of a Bill in all its stages. A. draws a Bill of Exchange upon B. in favor of C. & D. accepts it. Now cannot call upon B. before he can upon A. for the engagement of A. is to pay provided B. does not. A's liability is secondary. Suppose the Bill is endorsed, the engagement of the indorser is that he will pay if the acceptor does not. ^{the} ~~an~~ indorser then has three claims: one upon the acceptor, then upon the indorser & finally upon the Drawer, & he may sue them severally until he obtains full satisfaction. 1 Wils 187. 140. -

Falk 127. 131 - Ryd 151. 6 -

If the holder makes the acceptor his Executor, & then dies, the acceptor is discharged, & if he is discharged the others are of course - if the original liability is released, the secondary must be. The Drawer or indorser never incurred any liability to pay the holder, if by due diligence he could recover the money from the acceptor, & here instead of using due diligence, he has voluntarily released him - and it is the same to the Drawer or indorser, as if the acceptor had paid the bill. The reason why the acceptor is discharged is that the right & duty arise, & if an action was brought he would be both Off. & Defend. 1 Roll. 922. Plowd. 144. 543 - Falk 299. - 2 Bl. 6. 511. 512 - 3 Pl. 14. -

It is not to be understood however that this claim of the deceased holder cannot be enforced for no purpose; for in law, on the conditions of the deceased, & the Executor (the acceptor) it may be enforced in Equity but at Law it is gone & never.

Lex Mercatoria.

of the effect of Nonacceptance & the duty of the Holder of the Bill when Nonaccepted.

You recollect that it is the duty of the holder to present the Bill for acceptance, in that case only where it is payable a certain time after sight. But if in this, or in any case presentment is made, & acceptance is wholly refused, or is made partially or conditionally, notice must be given of the refusal, or of the nature of the acceptance (as the case may be) to the prior parties, i.e. to all the parties on whom the holder can claim, & in general they will be discharged. The reason of this rule was before explained to be, that the prior parties were entitled to this notice as an act of justice from the holder, that they may have an opportunity of securing themselves. 5 Bur 2674.
1 T. R. 712 - 1 Inst 45 -

It was formerly held that any of these prior parties who take advantage of the omission of notice, must prove actual damage sustained by the omission. But this rule has been exploded. He is not now bound to prove any damage sustained from the Dancer, is presumed to have effects in the hands of the Dancer, & the indorsee is presumed to have paid the Bill. If the holder has neglected to give the necessary notice, it is incumbent upon him when he sues the prior parties, to shew the latter have not sustained any damage by the want of notice, & if he can do this he may recover. 1 T. R. 406. 409 -
3 Pl. 142 - 2 H. Bl. 612 - Ryd 129. - Chy. 208. 5 132 191

Hence if the holder can prove that from the date of the Bill, to the time of payment, the Dancer had no effects

Lex Mercatoria.

Bills of Ex. & Prom. Notes.

effects in the hands of *vs.* Drawee the Drawee is *prima facie* not entitled to notice, & the *onus probandi* is more shifted to the Drawee - for if he had no effects in the hands of the drawee, there was no need of giving him notice, that he might ~~renew~~ secure himself. 1 T. R. 405.

712. 2 Gb. 713. 5 Gb. 239. 2 H. Bl. 610. 1 Bos. & Pul 652. 3 S. C. 230. 2 Esp. R. 515. 2 H. 154. 1 Esp. R. 333. 5 T. R. 239.

But if the Drawee, not having notice, had effects in the Drawee's hands, the fact that he had actually sustained no damage does not dispense with the necessity of notice. This rule is in *flexille*.

For the enquiry of his sustaining actual damage will lead to a very loose Examination - & the holder not having done his duty, the C. J. will not go into the enquiry whether damage has been sustained or not by want of notice. 1 Esp. R. 333. 3 Esp. R. 154. 7 East. 359.

It is said the Payee of a Promissory Note endorsing it with a knowledge of the maker's insolvency cannot defend on the ground that he had no notice of the non-payment. This rule is *quæstionable* & *questioned*. 2 H. Bl. 336. 1 Esp. R. 302-303 note. 2 H. Bl. 609. Peak. R. 243 note. 2 Gains. 343. 15 East. 359. 2 Kay. 52. 10 Ch. 52. 4 Bosc. 51.

I have observed that if the Drawee had no effects in the hands of the Drawee, he is not entitled to notice - and the rule is the same as to the Drawee, tho' an indorser had effects in the hands of *vs.* Drawee, for if the Drawee had none, he cannot avail himself of want of notice. 1 Esp. R. 515. July 88

And it has been determined that securities lodged by the Drawee with the acceptor for *vs.* purpose of raising money, but on which no money has ever been actually raised, are not such effects as entitle the Drawee to notice. In other words securities are not *vs.*

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

effects within the meaning of the rule. They are not the property of the Drawee he is a mere bailee of them. 1 Exp. R. 516.

But if the Drawee had effects in the hands of the Drawee, at the time of drawing the Bill, the subsequent death, bankruptcy, or known insolvency of the Drawee will not dispense with the necessity of notice - for notwithstanding all these it does not follow ^{that} that the Drawee may be ^{entitled} to continue ^{to} receive himself. Doug 497. or 515. 1 T. R. 2104. 2 T. R. 330
8. 2 H. Bl. 612. 7 East 359. 1 Exp. R. 334. Note.

The rule is the same in favor of an indorser, for a valuable consideration he is entitled to notice for he is liable as well as the Drawee, & when on such acceptance, no notice is given him, he is discharged, the same as the Drawee. same auth. &c.

And the Drawee, having informed the Drawee before presentment that he could not honor his Bill, is no excuse to the holder for not giving notice, for altho' he did so inform the Drawee, yet he may have changed his mind. & it is the duty of the holder to inform in case of nonacceptance. 2 H. Bl. 612 336-5 T. R. 239. 1 Gl. 405. 712. 245. B. R. 390. 424. 1 Bos. & Pul. 652. 1 Exp. R. 332. 515.

I have already observed that the Drawee is presumed to have effects with the acceptor - this presumption arises from the fact of acceptance. On the other hand if the Drawee had no effects, that fact affords presumption that he has sustained no injury from want of notice. According to some opinions this presumption may be rebutted by proof of actual damage according to others, it cannot be rebutted; i.e. some say he is not entitled to notice if he had no effects in the Drawee's hands;

Bill of Ex. & Prom? Note.

I other say, that he is not, prima facie entitled to notice, but if he has sustained actual damage, he may succeed on the ground of want of notice. It is true a case of this kind will seldom occur, but there is one kind to be found in y^e Eng^l author (see the case mentioned in the next page. T.T.) 2 T. R. 712 - 1 St. 714 - Hyd 131. To 136. Peak R. 203 Note - Swigg's End. 290. - Chitty 47. - 48. ~

This is really a Question on which I think ^{much} may be plausibly said on both sides. Then my self I have no doubt but that he is entitled to notice whether he had effects or not in the hands of the Drawer - & this want of notice is a good defence if he has sustained actual damages thereby - The objection to this is, that he had not right to draw the Bill, but he said he said to be guilty of a wrong in drawing a bill on a person in whose hands he had no effects - And as the case may be, he may be a sufferer by neglect of notice, as was evident in the English Case - It was this - D in Canada had effects in the hands of C. in London - D. writes to C. requesting him to draw bills on C. who, (C) had effects of his, (D's) in his (C's) hands. D draws Bills on C. in favour of D. and D. became a Bankrupt. C. refused to accept the Bill - and on return, in favour of D. the holder, as D. the Drawer, the Question was whether C. was entitled to notice of the non-acceptance of C. It was decided that he was entitled to notice altho' he (D.) never had any effects in the Drawer's hands, because had the holder notified him of the non-acceptance he would no doubt have taken measures to have withdrawn his effects from the hands of D. of which he was now prevented by his (D's) Bankruptcy. Here then C. suffered a special damage owing to want of notice, i.e. if it was to be made liable as Drawer

Lex Mercatoria.

Notes of En. & P. 1700! Notes.

Dwance of the Bills in Question. —

It has been determined that if the Dwance or endorser is a Bankrupt at the time of the refusal to accept, notice of non acceptance is unnecessary. I think this an unreasonable rule. What if the Dwance ^{his assignee} is a Bankrupt? His effects are consigned to ~~the assignee~~, & altho' he cannot avoid himself of the refusal to accept, yet the assignee may, & they have the same interest to withdraw the Bankrupt's effects from the hands of the Dwance, that he himself ^{would} have had, had he not been a Bankrupt. Lord ~~the judge~~ has laid down the rule, but he gives us no reason for it. There is a case in books Bankrupt Law (ingra) which I think implies a contradiction, & the latter in my opinion is the more correct. 3 Bro Chy! Books Bank. Law. 164. Chitty - 69. 49. —

If the Dwance absconds there is no need of giving notice, for the holder is not obliged to go in search of him.

1 Esp. R. 516. — And the neglect of Seasonable notice is excused by the Death or sudden illness of the holder, if notice is given as soon as possible after the impediment is removed. Potter's "Placitum" 144. Chitty 49. — Esp. R. 516

If the Dwance makes a conditional acceptance, the terms of which are to be complied with by the holder, & the holder does comply no notice is necessary, for by the compliance of the holder with the terms, the acceptance is absolute there is now any need of notice. Thus where the Dwance said "I will accept the Bill, provided you will indemnify me as a D?"

Lex Mercatoria.

67

Bills of Ex. & Prom. & Notes.

person for paying 300 money to you," and the holder did indemnify him, the acceptance was held to be absolute, & of course no notice necessary. Chitty 47-20. 101. — Bailey 71.

If the Drawee accepts absolutely 700 part of the amount only, the prior parties, i.e. the Drawee & Indorser are bound to the Extent of that acceptance without notice — you regard the acceptance in absolute. As if a Bill is drawn for 1000^{off} and the Drawee accepts it for 500^{off} — the drawer &c. is bound to pay the 500^{off} and this without notice. But as to the other 500^{off} there is a non-acceptance as to that, & the prior parties cannot be subjected to pay it, unless they are duly notified of such non-acceptance as to the 500^{off}. — Chitty 90.

March 15. 1813. Lecture 7th.

I was in my last Lecture treating of notice, necessary to be given to prior parties, of non-acceptance. The mode & manner in which this notice is to be given is different in case of a Foreign from that of an Inland Bill of Exchange. In the latter case no particular form is necessary. Payd 126-142. 1 L. R. 170. Chitty 90. —

In case of Foreign Bills, when not accepted, a Protest is necessary — and notice without Protest is not good. This is a rule of Public Law — the Law of mercantile Nations in general. It is not founded on the Municipal Law of Great Britain or of any other country. The rule on this subject is imperative, so that the want of Protest cannot be supplied by any proof — the testimony of witnesses cannot be substituted — there must be a Protest. L. Ray? 993. 6. Mod 4. — Salk 121. — 2 L. R. 713. — 5 G. 2 229. —

This form it seems is made indispensable by the usage & consent of nations, that there may be an uniform rule — For there is no other reason why evidence of non-acceptance may not as well be given

Lex Mercatoria.

Bills of Ex. & Prom. Notes.)

given otherwise than by Protest, in case of Foreign or inland.
Bills of Exchange.

This protest is to be made by a Notary Public. For the purpose of making this Protest regular, after a refusal to the holder to accept the Bill, a presentment of the same Bill is to be made again by the Notary Public, & if on this second presentment the Drawee refuses to accept, the Bill is to be noted for non-acceptance, & then a formal Declaration of the refusal is to be annexed to the Bill, i.e. a Protest is to be entered upon it; & if the Bill is lost or not to be found, a Protest may be made on a copy. Chitty 90. 91. 124. - Ryd 136. - Kealey B. 2. Ch. 10 Sec. 17. - Shaw 52.

And to this Protest, so made by a Notary Public, full evidence is given by all Foreign Courts of Justice - for a Notary Public is an officer acting under Public Mercantile Law - not under any Municipal regulations of the Country where he resides, or any other Country. - Skinner 172 - Chitty 91 - 1 Shaw 164 - Kealey 281

The noting the Bill for non-acceptance, does not itself amount to a protest - nor will it supply the place of a Protest - nor is it even Evidence of a Protest. 2 T. R. 713 - 4 T. R. 175 - B. N. P. 271 - Ryd 137. -

And this Protest is regularly to be made by the Notary Public himself, not by any of his subordinate officers, as a Clerk &c. for this subordinate officer is not recognized as a public officer. 4 T. R. 175 - Ryd 137 - Chitty 91. -

If however a Notary Public cannot be obtained within a reasonable distance, as is often the case, the Bill may be protested according to English principles, by any substantial Person of the place where it is dishonored, in presence of two or more

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

The Protest is dated on the same day, on which the notice of protest is made. The presentment of the Bill must be in the regular hours of business, & the Protest is to be made at the same time. It must be made in the regular hours of business, or between Sunrise & Sunset. Chitty 91-93. Ryd 137. 143.

The Protest must conform in its substance to the custom & form of the place where made. The forms of Protest are different in different countries. If the protest is made in England, it must be regulated in its structure according to the English form if in France according to the French form. Chitty 92-139. 161. - See form see page 144.

The protest is generally to be made at the place where the Bill is dishonoured. But still if the Bill is directed to one at A. requesting payment at B. protest may be made at either place. Chitty 92.

And a copy of the Bill is always to be annexed to the protest. - but a copy of the protest need not accompany the notice of non-acceptance, the notice of the protest must be given. As a protest of the Bill is a necessary & indispensable part of the proceedings, no notice of the protest must be given, as well as notice of non-acceptance. But still a copy of the Protest need not accompany the notice of non-acceptance. 2 H. Bl. 569. - 1 Cr. 251. 12. B. & P. 271. 1 Inst. 45. 12. - See 507.

And it is not necessary to send yr. protested Bill truly. Chitty 92.

With respect to Ireland Bills, I have observed the form was different. Upon non-acceptance of such Bill no protest is necessary. Any act evincing the Treasurer's refusal, & proved as facts are ordinarily proved is sufficient to subject the joint parties. See 404. Hall. 131. 2 H. 69. - 2 Ryd 992. - Chitty 93.

Lex Mercatoria.

Bills of Ex. & Prom? N. B.

It is said in one case, the notice must Express the holder's intention not to give credit to y^e Drawee. This I think is questionable. All the reason why notice must ever be given, is, that the Prior parties may secure themselves. Upon notice then of non-acceptance they will know they, as matters of course, are liable to the holder of the Bill - & therefore I conceive it is not necessary that the holder inform the prior parties in so many words that he will not trust to the Credit of the Drawee. 1 T. R. 169. Chitty 9 D. 191.

But tho' by Common Law in Ireland a Protest when dishonoured does not require a Protest, yet by the English Statute 38 4. Ann a protest is required for the purpose of entitling the holder to both interest, & Damages. This Statute is not made for the purpose of subjecting the prior parties, for they are liable to the amount of the Bill without protest, & not withstanding the Statute. It is a mere municipal regulation, introduced by the above Statute, which at G. L. was unknown. Str. 910. Chitty 9 D. 94. Hy. 150. —

A Protest when made under this Statute, is to be made by the same person, & in the same way, in which it is to be made upon a Foreign Bill of Exchange. Chit 92.

But tho' a Protest is not necessary in case of an Ireland Bill, except under this Statute, yet notice of non-acceptance must be given as well of an Ireland as of a Foreign Bill, tho' this independently of the Statute, & for the same reason Chit. Hy. 150. —

In case both of Foreign & Ireland Bills, notice sent by mail is sufficient, even tho' the Letter contain any mistakes, for it is not supposed that the holder is obliged to repara-

Lex Mercatoria.

63

Bill of Ex. & Prom. ? Notes ?

personally or to send by hand to inform him of the refusal to accept. He is obliged to do no more than is ordinarily done. That is put the notice in such a train that it is altogether probable the Officer for his will receive it. The ordinary mode then, is to send by Mail. 2.

H. B. L. 509 - Barnard. 199 - Pothier lays down a different rule. see Pothier "Placet" 44. -

And when no Mail goes to the place where notice is to be given, sending by the first ordinary & direct mode of conveyance is sufficient, though an earlier accidental conveyance might have occurred. 2. H. B. L. 565 -

As to the Time of giving notice & delay may be excused by inevitable accident, as sickness, mobbing &c. - But in general it cannot be excused, except by some cause beyond the control of the holder. Pothier 144. -

Notice of non-acceptance, & in case of Foreign Bills of Protest also must be sent in a reasonable time - & it must be sent to all the parties - to whom the holder intends to resort for payment - If he is satisfied with the responsibility of the Drawee alone - notice to him only is necessary. But if he intends to resort to the Indorsers as well as the Drawer, he must give notice to both. - 2 H. B. L. 569 - D. V. P. 271 - Ryd 125. to 129 - Hauß 248.

What this reasonable time is, is a Question of Law after the facts are ascertained - before they are ascertained it is a mixed Question - ut ante. -

Formerly much more time was allowed, than at present. Notice of non-acceptance within 2 months was formerly held sufficient. But now it is settled, that the notice must be given on the day of non-acceptance, if any mail or ordinary con-

Lex Mercatoria.

Bills of Ex. & Prom. Notes.

Conveyance goes out that day. if there is none, notice must be sent by the next conveyance or mail by which it can be sent. 4 T. R. 174. - L. Ray? 742. - 2 Stra 429. - 2 H. Bl. 565. - 1 T. R. 168. -

And if the party to whom notice is to be given, resides in the place where acceptance is refused, notice of the refusal, if possible, must be given him on the same day. As in case the prior parties live out of the place, notice if possible must be sent them on the day of refusal, so if he lives in the place, he is equally entitled to notice on the same day. 1 T. R. 169. - Ryd 126. -

It was once held that the notice required must come from the holder himself - but it has been since determined by Lord Mansfield that notice from the Drawer is sufficient - it is enough if the Prior Parties have notice whether it come from the Drawer or the holder. 1 T. R. 167. - Ryd 126. Chitty 94. -

And it seems that notice by one party, having a right of action on the Bill, will inure to the benefit of other Parties who have claim on the Bill - It will operate in favor of the latter as if it were addressed before them. Thus if the holder is an indorsee, & gives notice of non-acceptance to the Drawer & Indorser, & then compels the Indorser to pay. Now the Indorser may recover of the Drawer, without his (the Indorser) giving notice, for the holder has given him the necessary notice, and there is no need that the Indorser should again inform him. So also if the 2^d Indorsee give notice to the Drawer of non-acceptance, this will operate in favor of the first Indorser, if he should be compelled to pay the Drawer. - Chitty 94. -

And this notice required by promissories should be given to all the Prior parties to whom the holder intends to

Sex Mercatoria.

63

Pills of Ex. & Prom? Notes,

any want to make liable, or to resort for payment. If this notice is not given to a Particular Party, that Party is discharged. Suppose the holder giving notice to the Drawer, and not to the Indorser, - now he may resort to the Drawer, but the Indorser is discharged. As if A. draws on B. in favor of C. & C. indorses it to D. and D. indorses it to E. and E. gives notice of non-acceptance, to the Drawer only - he cannot resort to any other party who had no notice. 5 Bur. 2670. - 1 Port. 48. - 1 T.R. 712.

I have observed that in general when the Drawer has no effects in the hands of the Drawer no notice of non-acceptance need be given him; but still this fact (of no effects) does not dispense with the necessity of notice to an Indorser to whom the bill is indorsed to resort. No notice is necessary to the Drawer, for he has never parted with any value for the Bill which he has put in circulation but the indorser has paid a valuable consideration, and he is to pay if the acceptor does not, and therefore he ought to have notice that he may secure himself to the acceptor or as the case may be to the Drawer. 1 T.R. 712. - 1 Port. 48. - 202-203. - See also Lec. 221

On the other hand if notice is given to the indorser only, want of notice to the Drawer will not avail him (the Indorser) tho' formerly considered different. For it is not material to him whether the Drawer has had notice or not - it is sufficient if he himself has been furnished with notice so that he could secure himself. Indeed every Indorser is, in effect, as to every subsequent holder in the nature of a surety. - This is apparent from the structure of a Bill. A Bill is drawn requesting the ^{payment} of a sum of money to A. B. or to the order of A. B.

Lex Mercatoria.

Bills of Ex. & Prom. ? Notes.)

indorses it requesting y^e same sum paid to C. D. he is in the nature of a mere Promisor. Sena 441. - 2 Bos. 669. - 1 Corp. R. 334.

For the former opinion suggested in the last principle, see Salk 131. 132. - 1 Ray. 452. -

I have before observed, for another purpose, that the consequence of neglect to give notice of non-acceptance may be waived or avoided by matter Ex post facto. I have respect the rule for the purpose of giving Examples & Authorities.

Thus if after a Bill has been dishonoured by the Drawee a junior party pays a part of the amount, this is in legal y^e just a waiver of the objection arising from want of notice, & admits his liability. The rule is the same if instead of paying a part, he promises to pay the whole here again he admits his liability. Sena 1246. - 2 T. R. 713. B. 4. P. 270. - Peck R. 202. - 1 Corp. R. 07. -

It has indeed been held on the other hand, that if the promise is made without the knowledge at y^e time of the fact of non-acceptance the party is not bound. But this appears to be overruled, for it has been resolved that such promise is an implied admission; that due notice has been given, & supports the warrant of this notice in the Declaration. As to the former rule, see Bos. 2676. - 1 T. R. 712. - For the rule as it now stands, see, 1 Corp. R. 334 note / 2 East 462. - (7 T. 231. - 236. - 1 Bos. & P. 326. -

It has been determined by Lord Raym^r in one case, however that a promise by a third party, without knowledge of the legal consequence of want of notice does not bind him. L^d Raym^r decides this case, in this way, tho' notice had been actually given

Bill, of Ex. & Prom? *Atter.*

but it appeared the Defendant - had not knowledge of the legal effect - The case was this - The holder of the Bill gave the Drawee an enlarged time for payment - Now this would discharge the Drawee, - but still he promised to pay the Bill - and Lord Mansfield decided he was not bound by the promise for the above reason. This case is no where to be found except in a note to Chitty 102-3. 158.

I think the above rule Questionable. For it is an undoubted principle of Law, that a man can never discharge himself from a liability by a plea of Ignorance. The rule should be condemned ab incommenciis, for the ignorance of the law is sufficient to condemn one of its incorrectness. And by the holder giving the Drawee an enlarged time to pay the Bill, he clearly discharges the Drawee - but a promise to pay after notice of nonacceptance. I conceive to be good. If this decision had been that the promise was a nudum pactum, as made without consideration, it would have been different. But this would contradict a former rule, that the acceptor of a bill could not ever want of consideration, in any action brought by a subsequent bona fide holder of the Bill. And further L^d Mansfield decided in this case not only that the Drawee would not be liable on his promise, but that in case he pays the money he may recover it back, because he would pay it under a misapprehension of the Law. Chit. Supra

In case of an acceptance originally conditional want of notice is cured by a performance of the Condition at any time before the day of payment - for then the acceptance becomes absolute & then no notice is necessary. Chitty 101. 84-81. - St. a 212 - Corp. - 571-1 T. R. 182.

There is a species of acceptance which I have not

Lex Mercatoria.

Bill of Ex. & Prom. & Notes.

fully explained called an acceptance supra protest. I shall now consider it.

When a Foreign Bill is protested for non acceptance, it may be accepted supra protest, and the Drawee himself may thus accept the Bill for the honor of the Drawee or of any Indorser, after he has refused acceptance according to the tenor of the Bill. The reason of his acceptance for the honor will be explained hereafter. I will barely observe that when he accepts supra protest for the honor &c. he does not do it on the ground of any liability, but as a Stranger merely. — Bower Placit. 23. 4. or 237. Ryd 152. to 156. — Chitty 23. 103. 122. 163. 180. 209. —

This is frequently done by the Drawee himself when a Bill is drawn on account of a D.^d person, and the Drawee is unwilling to accept on account of this D.^d person, but is willing to accept on account of the Drawee or some Indorser. Thus if A. draws a Bill in favor of J. S. payable on account of B. — Now if the Drawee accepts this bill according to its tenor & has no effects of the Drawee, his only remedy is vs B. — & he may be unwilling to accept on B.^d account — for he may not be responsible — but still the Drawee may be willing to accept for B. — He may therefore have the Bill protested for non acceptance according to its tenor & still accept it for the honor of the Drawee. What he thus pays will not go to the account of B. but to the account of B. for whose honor he accepted it. Ryd 152. — Bower 456. — 1 T. R. 269. — 1 T. R. 6. 139.

So in common cases, if the Drawee is unwilling to accept on the Drawee's account, yet he may be willing to accept for an Indorser, & in this case he immediately sends the protest to the Indorser, as when he accepts for the honor of the Drawee, he must give

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

notice to the Drawee. Bower P. 334. Chitty 163.

This mode of acceptance by the Drawee has this important consequence - that it operates to rebut the presumption, arising from a simple acceptance that he has effects of the Drawee in his hands. - He supposes to draw upon D. - Now D. says I owe D. nothing, but still I am willing to advance money for him, for he is overpaid. But I will not accept his Bill according to its tenor, for if I do I thereby raise an implication that I am indebted to him - or that he has effects in my hands - & the onus probandi in such case will be upon myself. I will therefore refuse acceptance according to the tenor of the Bill, and accept it *supra protest* for D's honor. - Chitty 269. 270. - Bower 454. - Hyd 136.

The effect of such acceptance is to give the acceptor a right of indemnity to the party for whose honor he accepts, or to all the parties prior to that one. - Whereas a simple acceptance according to the tenor of the Bill can never give any thing more than this right to the Drawee on the person on whose account the Bill was drawn. And tho' it does this the presumption is that he is indebted ^{to} the Drawee to the amount of the Bill, and that if he pays it, will only be an offset in his account. - Bower 458.

So an acceptance *supra protest* is followed by important results. E.g. Suppose there is no Indorser as yet, & the original Payee is the holder, & the Bill is accepted *supra protest*. Now the acceptor's indemnity is to the Drawee, and he may charge him with so much money. And by acceptance *supra protest* he rebuts the presumption that he the acceptor is indebted to the Drawee, & the onus probandi is not upon him.

But further, suppose the holder is an indorser - Now there are ² three persons. - The Drawee accepts *supra protest* for the honor of the Indorser, the acceptor may claim the amount of him (ye Indorser) and also of the Drawee, for the Indorser could have remedy in the Drawee.

Lex Mercatoria.

Bill of Ex. & Prom. ? Notes.

Drawer, & the acceptor must of course have the same remedy. But he cannot have a remedy as any subsequent party. ~

Again there are two Indorsers. Suppose the Drawer accepts supra protest for the honor of the 2^d Indorser. Now he can compel this second Indorser to pay the money back - but this is not all. For he has a remedy as the first Indorser. And again if the first, & second, Indorsers are liable to the acceptor, so also is the Drawer, for he (the Drawer) is liable to both or to either of the Indorsers. ~

But if after this acceptance, a third Indorser becomes a holder, the acceptor cannot claim of him, (the third Indorser.) He can only claim of those of whom this person for whose honor he accepted might have claim. This might be this, first he has a right as to the party for whose honor he accepted, and as he comes in his place, he has 2^{dly} a claim on all, who are liable to the person for whose honor he accepted. Bill - but his claim does not extend to any subsequent party. - Ryd. 153. D - Bares. 454. 1 J. R. 269. ~

March 16th 1813. Lect. 8th

I further observe upon this subject, that if the Drawer refuses to accept the Bill at all, any one person may accept it for the honor of the Drawer or any Indorser. Bares. pl. 34. - Barth 129. - Ryd. 153. Chitty. 104. ~

But an acceptance for the honor of the Bill is the same as an acceptance for the honor of the Drawer, i.e. an acceptance in that form, is not an acceptance for the honor of any Indorser but for the honor of the Drawer only. Chitty, & Ryd. supra. ~

And a bill previously accepted supra protest for the honor of one party by one person, may afterwards be accepted by another person, for the honor of any other party, Thus - Drawer accepts for

Lex Mercatoria.

Faith of Ex. & Prom. & Note &c.

the honor of the Drawer, another person may accept for the honor of an Indorser. Bower, pl. 42. —

It has been said though it seems incorrect, that the holder is bound to receive an acceptance supra protest when offered by a substantial or responsible person. But this is not true for it has since been decided, that the holder is not bound to receive such acceptance at all. If A. draws a Bill. on B. in favor of C. Now C. expects B. will accept - he is a responsible person - & C. is willing to rely on him. But B. refuses acceptance, and C. is willing to accept the Bill supra protest for the honor of A. - Now C. the Payee would never have received the Bill, unless he had expected the Drawer would have accepted it, or at least if he had supposed a Stranger could compel him to receive an acceptance supra protest. It sounds harsh on principle to say, that the holder should be bound to receive an acceptance by a Stranger, merely because he is a responsible person. Bower, pl. 27. 35. - 2. Mod. 410. - Hyd 155. —

If after an acceptance supra protest by a 3^d person, the Drawer himself should become willing to accept, the acceptance supra protest may with consent of the holder permit it; but not otherwise - for this acceptance is as irrevocable as any other acceptance; and the acceptor supra protest having made himself liable, he cannot discharge himself without consent of the holder. Bower 457. - Hyd 154. —

It is said the holder should have the Bill protested before he receives the acceptance supra protest, & otherwise it is said the Drawer might alledge that the acceptor was not the person on whom the Bill was drawn. But I apprehend this holds

Less Mercatoria.

Bills of Ex. & Prom. (continued)

only as to Foreign Bills of Exchange, for it is unnecessary to protest an Inland Bill of Exchange, for the purpose of creating a liability - it is a Statute requisite made to entitle the party to a recovery of interest. Damages & Costs. Chitty. 105.

The mode of an acceptance Supra protest is this - the party appears with witnesses before a Notary Public & declares that he accepts the Bill for the honor of the Drawer, or Indorser, and that he will pay the same according to its tenor. The usual form is to name him for whose honor he accepts it. But it seems the word "accepts" is sufficient, without anything more. Ryd 153. - Chitty 105.

An acceptance Supra protest is however as binding on the acceptor as if there was no protest. Its being supra protest does not effect the liability of the acceptor. He is liable, at any rate, to the holder, & the subsequent parties. It varies his rights as between him & all the prior parties, but not his liability. as to the holder or subsequent parties. The reason of this rule has been sufficiently illustrated. Dover pl. 35. 45. - L. Ray? 575. - 12 Mod 414. - Com R. 76. - 2 Burr 1672. 1674.

If one accepts for the honor of the Bill, which is in effect an acceptance for the honor of the Drawer, he is liable to all the indorsers as well as to the holder. He is liable to all the parties subsequent to the Drawer. - for as to all subsequent parties, he assumed the liability which the Drawer by reason of the protest was subject to. But he is not liable to the Drawer. 1 Esp. R 113. - Dover 457. - Ryd 153.

If one accepts for the honor of a particular Indorser, he is liable to all the subsequent Indorsers. but not to that indorser.

Lex Mercatoria.

Bill of Exch. & Prom. Notes

indorse for whose honor he accepts, nor to a prior Indorser, nor to the Drawee. For the Extent of his liability is no greater, than that of the party for whose honor he accepted. Now the 2^d Indorser is not liable to the first - nor the first to the Drawee - but the Drawee is liable to the first Indorser, & the first Indorser to the second. of course he has the same rights to the prior parties as the person had for whose honor he accepts. — Bowen. 457. — Ryd. 153. — Chit. 105. —

On the other hand, as to those parties to whom the acceptor *supra* protest is not liable he has a remedy or right of indemnity as to those parties for whose honor he accepts, and all prior parties. If then he sustains any damage, as if he is obliged to pay a bill, he may recover as the party for whose honor he accepted and all his prior parties. If he accepts for the honor of the Drawee, he has a remedy to the Drawee only; if for the honor of an Indorser, to the Indorser and Drawee, — If he accepts for the honor of a subsequent Indorser, he has a remedy to him & all prior Indorsers, & the Drawee. Bowen fol. 47. — 1 T. R. 269. — 10 Ben. 139. — 1 Esp. R. 113. — Ryd. 155. —

And here I would make an observation which (I think) will more definitively & simply Explain his character & liability, than all the rules heretofore laid down on the subject — and this is this — that an acceptor *supra* protest, is, as to the party for whose honor he accepts, & as to all his prior parties, in the character of an Indorser. He ultimately becomes the holder of the Bill — i. e. who is supposed that he pays it, & the presumption always is that he will pay it. This is obvious if you consider the structure & effect of the instrument. — A Bill is drawn upon A. payable to B.

Lex Mercatoria.

Bills of Ex. & Prom? Notes &c.
and B. endorses it to C. and C. gives it to D. for acceptance, and
D. says, I will accept the Bill for the honor of B. the
Indorser & D. pays the money upon it. Now D. was a stran-
ger, but as he pays the amount to the Indorser, he becomes vir-
tually nothing more or less than a purchaser of that Bill. You
observe D. does not accept it in account of any liability, but as a mere
stranger. He pays the money to the Indorser, he is then en-
titled to the Bill, & becomes the holder of it. It is in effect pre-
cisely the same as if instead of accepting the Bill *supra* protest,
he had offered to purchase the Bill, & had paid the Indorser
the money for it. 1 Cap. R. 113. ~

Transfer, & Negotiation of Bills.

Bills which are negotiable at all are in their nature ne-
gotiable in infinitum. This is the case with Bills of Exchange
properly received, and with Bankers checks. It was formerly held
that bills payable to bearer, were not so negotiable - but it
has been long since settled otherwise. 3 Wils. 211. - 2 Bl. 6. 467. -
3 Burr. 1317. 1327. ~ For the former rule at *supra* see, 3 Ld.
297. - Falk. 125. - L. Ray. 140. ~

When a Bill is not negotiable, a stranger will operate
as the party making it, as if it were negotiable; i. e. it will subject
him to the amount of the Bill if the person to whom he trans-
fers it, cannot recover of the Drawers, person on whom drawn. You
may recollect that Chases in action, tho' at C. L. not negotiable
were so far transmissible as that the aft. poss. tho' he can main-
tain no action in his own name as the original party, may
have an action on the implied contract as an assignor. Thus if a

Bill of Ex. & Prom. & Note.)

Promissory Note to A. which is not negotiable is transferred by B. to C. Now there is an implied Covenant on the part of B. that A. the promisor will pay it, and if he does not the assignee may have an action on this implied Covenant of the assignor. Salk. 125. 127. 133. -

Holt. 117. - Bur. 1226. - 2 Bl. C. 442. -

And whether a Bill is negotiable or not, is a Question of Law, for the Court to determine. -

It is said indeed as to new cases, i.e. where the doctrine is not settled, that the Custom of Merchants may be enquired into, & to ascertain this, those eminent in the business may be admitted to testify. This doctrine appears confused in the Books. There is no doubt but a Merchant may be Examined to tell what he knows of a particular Custom &c. used by Merchants. But he is introduced in this case in the same way that a Book written upon that subject would be introduced - I trust, - or for the same purpose - that we would consult a Dictionary. I trust he is not used for the purpose of enabling the Jury to find the particular Custom, & thereby enable the Court to make an application of the Law to that finding - but to give information to the Judges. The rule is absurd considered in any other sense - for otherwise the Merchant is testifying to what the Law is. - Still it is always so laid down in the Books. 2 Bur. 1216 - 1 Bl. R. 298. - Doug. 653. - Watson's Law Port. 253. to 254. -

It is a general rule that a valid transfer is made only by the Payee, or other person having the legal interest in the Bill. Hence an indorsement by one not having the legal interest, does not transfer the interest to another. If a Bill is drawn payable to A. B. and C. endorses it to D. - Now C. is a Stranger and cannot transfer the interest to D. for he himself had none. And if a Bill is made payable to A. B. and another

Lex Mercatoria.

Bill of Ex. & Prom. & Notes.)

Person by the name of A. B. should endorse it. this does not transfer the interest to the indorser - for the Indorser himself is a Stranger & had no interest. 4 T. R. 24. - 1 The B. L. 647.

But if a Stranger will ~~not~~ voluntarily so indorse the Bill, he will himself be liable, tho' such indorsement will not make the Prior Parties liable. The volunteer has no title to the Bill, but by transferring it, he warrants the payment of it, to the person to whom he makes the transfer. Chitty 121. 122.

Where a Bill is made payable to bearer, it may be transferred without indorsement - by mere manual delivery. There is no need of indorsement, for by the terms of the Bill the interest will pass without it. And in this case, if it is transferred by a person, who is not the owner of it, such transfer will not subject the Prior Parties, provided the person to whom it is transferred knows that the person transferring was not the owner. But if he was ignorant of this fact, he can recover as the prior parties - for here is a Bill payable to bearer and a Bearer has passed it to him - and were it not that he was allowed to recover as prior parties, the credit of these Bills would be impaired & their circulation prevented.

The rule holds the same as to a Bill payable to order which has been endorsed in Blank by the Payee. There is no need of an indorsement in such case, it will pass by manual delivery; for any holder has a right to fill up the Blank with his own name. Suppose then a Bill is payable to A. on order, and indorses it blank. Now this Bill may be transferred by manual delivery, for any person into whose hands it may come may fill up this blank indorsement with his own name. This reason why he has a right so to fill it up is, that the person who thus puts his name on

Lex Mercatoria.

(Bill of Ex. & Prom. & Notes.)

the Bill holds out a credit to any person who will accept it, & as I before remarked, the holder may fill up the blank by inserting his own name. & also the Bill may run the ground that was the usual by manual delivery of the ultimate holder of it resort to the prior Parties by filling up Ex. at supra. 1 Burr. 1516. - 196. 452. - 108 L. R. 445. - Doug. 611. or 632. - L. Ray 734. - Chitty 9. 51. 100. 121. 122. 201. 209. - Hyd 102. -

If a Time note being Payee or holder matures, the right of transfer belongs to the Holder. She has become legally incapable of endorsing it. Sher 516. - 10 Mod. 246. - Chitty 110

If the Payee or holder becomes a bankrupt, the rights of transfer generally vests in the assignees, and this right, as a general rule, vests from the time of the act of Bankruptcy committed. There are some Exceptions to this, introduced by English Statutes. Beaver 469. - Hy. 525. - Hyd. 107. -

If however in such case the holder should have delivered the Bill to another before his Bankruptcy, but has for some cause omitted or neglected to endorse it, he may endorse it after Bankruptcy for this is only "completing an act which was begun before Bankruptcy - and which in Justice should be performed. Pick. R. 50. -

On the Death of the holder the right of transfer devolves on his personal representatives. 2 Wils. 1. - 2 Stra 1260. - 2 Burr 1225. - 1 J. R. 447. - 196. R. 622. - Chitty 111. 112. -

If a Bill is made or transferred to two or more the interest in the Bill and right of transfer is in both or all of them collectively & not in one alone. But this interest or right, if they are all Partners, may be transferred by the act of one, because one

Lex Mercatoria.

Bills of Ex. & Prom. & Notes of 2 partners has a right to act for both. But the male supposes they are not partners. This is not like the case of 2 persons drawing a Bill payable to their own order, for here they are ipso facto partners - they have by their contract made themselves jointly liable - & therefore the act of one in the name of both will bind both.

Hyd 108. - Doug. 659. -

If a Bill is payable to A. for the use of B. the right of transfer is in A. because he has the legal title & B. the Equitable interest. Carth. 5. - 1 Inst. 307-309. - 2 Salk 549. -

When a Bill is indorsed to an Infant, & by him endorsed another, I find no judicial authority whether the latter may recover to the former parties. Make this a Most Question. I will reserve my opinion till you discuss it.

Bills are usually transferred after acceptance & before payment. This is not universally the case, for it may be transferred before acceptance & after the time of payment -

And a Bill (bearing a solism in language) may be transferred before it is made - or in other words a transfer of an intended Bill may be made before the Bill itself is made. Thus if A. endorses his name on a paper & delivers it to B. Now B. has a right to procure a Bill (written on the opposite side from I. S. payable to A. Now the bill is endorsed by the Payee to B. and such transfer is good, tho' in reality made before the Bill is drawn. Doug 496. or 516. - 1 H. Bl. 312. 316. 319. - Chitty 112. 113. - Hyd 49 -

A valid transfer may be made after the time appointed for payment. However in such transaction offends ground

Lex Mercatoria.

Bill of Ex. H. Simon & Co. (V. A.)

of suspicion the holder takes the Bill subject to all the Equity to which it was subject in the hands of the prior parties provided he had knowledge of such Equity - and according to some opinions whether he had knowledge or not. 3 T. R. 42. - 7 B. 422. - 1 Rib. 220. - 2. D. 15. 16 - L. Ray. 575. -

Still however the party who transfers the Bill after it becomes payable cannot avail himself of such grounds of suspicion as a B. person who became a bona fide holder for a valuable consideration, tho' a prior party may. For the Defend himself made the irregular transfer and he has no ground of complaint that he has not a right to take advantage of such ground of suspicion. [This ground of suspicion is, (that by a transfer after the day of payment) that the transfer was unfair - see ante Page -] It cannot operate in his favor. There may indeed be some ground of suspicion that he had received the value of the bill, or that he had forgotten all right to receive upon it. Now the prior parties may take advantage of this. but he (the person transferring & defend in this case) cannot. The rule is laid down, at supra that he cannot avail himself of this ground of suspicion as a B. person - who becomes a bona fide holder for a valuable consideration. but I should think also the party transferring could not make the objection to the immediate transferee - suppose I am the holder of a bill, and after the time of payment I send it to you. Now if there is no fraud between you & me, nothing will deprive you of your right of action. I can see no reason why you should not stand upon the same footing as a subsequent bona fide holder for a val. consideration. 7 T. R. 412. 413. -

But an endorsement after payment binds no other party than

Lex Mercatoria.

(Bills of Ex. & Prom. & Notes)

the person making it. This rule I trust presupposes the day of payment has passed. If the Bill is transferred before the time of payment, tho it may have recently been ^{paid} before, the time, it affords no ground of suspicion. Thus after payment by the Drawee of a Bill the holder endorsed it over, it was determined that the subsequent holder could not recover to the acceptor any more than as the Drawee. 1 Wils 46. - 4 T.R. 479. - 1 B. & C. 49. - - -

But a Bill paid in part may well be endorsed over to the residue. L. Ray? 260. - Garth 466. - 12 Mod. 213. 1 Salk. 65. - 2 Wils 262. - -

March 17. 1713. Sect. 9th -

In treating of the negotiability of Bills, I yesterday intended to explain the nature of a transfer & by whom it is made. There are certain rules relative to the mode of transferring Bills. - -

Now this mode is governed in all cases, according to the legal effect of the Bill, it is not governed of course by the terms of it, tho' generally the terms & the legal effect are the same. That they are not always the same is manifest from the case of a fictitious payee, - Where such a Bill imports to be payable to order, but it cannot be endorsed, for by the supposition there is no person in life who can endorse it. It must be payable to bearer if payable at all. The terms & the legal effect of such bill are entirely different? 1 N. Deb. 600. - - -

A bill payable to B. on bearer, or to bearer generally i.e. without specifying any particular Payee, may always be transferred by mere manual delivery without endorsement. An endorsement on such a Bill payable to ~~order~~ ^{bearer may be} made

Lex Mercatoria.

(Bill of Ex. 16. Nov. 1840.)

by a Stranger, and even if an individual is named, as if it is drawn payable to H. or bearer "an endorsement is unnecessary. It is negotiable by manual delivery.

The rule is the same as to a Bill payable to "H. or order", after H has endorsed a Blank, but not before. In the first instance a Bill thus payable can be transferred by indorsement only - but if it is endorsed blank it is transferable by delivery, because the ultimate holder may fill up the Blank with his own name and thereby become the immediate indorsee.

1 Bos. 452. - L. Ray. 442. - Holt 115. - 1 Stra 457. - Dungh. 633. - on 611. - Peake R. 225. - D. Cas. 1516. - 1 Bl. R. 445. -

The original distinction as to the mode of transfer between a Bill payable to order & one payable to bearer is, that the former cannot be transferred in the first instance without endorsement, but being endorsed in Blank it may be transferred by manual delivery. On the other hand a Bill payable to bearer may be originally transferred by delivery and without endorsement. 1 H. Bl. 606. - 1 Esp. R. 140. -

These mercantile contracts are all liberally expounded and as no formal words are necessary in the creation of a bill so no formal words are necessary to make a valid endorsement. Nothing more is necessary than for the Payee to write his name on the back, and this is called a Blank endorsement. 2 Bl. C. 464. - 2 Stra 1102. - 1 Salh. 126. 128. 130. - L. Ray. 442. - Com. R. 311. -

Indeed it was formerly contended that any written entry on the back amounted to an endorsement unless it expressed a refusal. But this is not law. Thus it was

Lex Mercatoria.

(Bill of Exchange & Promissory Note.)

contended that the Payee writing the N^o of the bill on the back was a good endorsement. 3. T. R. 547. ~ ~ ~

The endorsement may be in either of three ways - viz - In Blank, - In Full, - or it may be Restrictive. This division is illogical, for in strictness there are but 2 forms of endorsing a bill - viz - in blank - or in full - and the latter is divisible into endorsement in full restrictive, and in full not restrictive. The different forms are so divided in the books, & I shall therefore pursue the same division, and quit - As to a Blank Endorsement. ~ ~ ~

A Blank Endorsement is nothing more than the writing of the Payee's name on the back of the Bill. This is the most common mode, - it facilitates the currency of the Bill, and gives it a more indefinite negotiation, as when thus made the Bill may be transferred by mere delivery & the ultimate holder constitute himself the immediate Endorser by filling the Blank with his own name. Payd & 9 Chit 117.

It is to be observed however that endorsement in blank does not per se transfer the interest - but merely gives the holder a power of constituting himself the Endorser or assignee by filling it up to himself. Thus if a Bill is payable to A. and it puts his name in Blank in the back, this is not per se evidence that the holder has any interest in the Bill - nor can he receive upon it - until it is filled up. The usual form is to fill it up with these words "Pay the contents to A. Es." - 1 Salk 126. 124. 130. 2 Mod. 192. 244. - 2 Str. 443. - 2 Str 1103. - Com. R. 311. - D. N. P. 275. ~ ~ ~ ~ ~

Lex Mercatoria.

(Bill of Ex. & Prom & Notes.)

An action may be commenced by the holder before the endorsement is filled up. It is only necessary that it be done when it is delivered as Evidence of his title to the Jury. He may do it on Trial, but it must be done before a verdict can be found in his favor - for without it, there is no evidence of his title and interest in the Bill. ~ ~ ~

A Blank endorsement while it remains blank, is ambiguous in its effects - or rather it has no certain effect. It enables the holder to fill it up with his own name as Indorsee - or he may fill it up with a power of Attorney to himself - or he may fill it up with a receipt. He has a right to fill it up with anything which comports with the nature of the Bill. If he fills it up with an order of payment to himself - he constitutes himself the Indorsee - if he fills it up with a power of Attorney to himself - he thereby constitutes himself the Indorser's agent to collect the same &c. - If he fills it up with a receipt, he constitutes himself the agent of the Endorser, and by the receipt, it appears he has paid the money over to the Endorser. But for the purpose of entitling himself to a recovery on the Bill he should fill up the Blank with an order of payment to himself. - Fryd. 95. 96. - 1 Shon. 162. - L. Ray? 471. - Falk. 125. - 1 Bal. R. 297.

It follows from the last rule, that while the endorsement remains blank, an action may be brought in the name of the Endorser. The holder may give the bill back to the endorser, & let him bring the action - or the holder may bring it in the name of the Endorser, and if he chooses he may write over the name a power of Attorney to whom he has the right. - But this is unnecessary. the endorsement

Lex. Mercatoria.

(Bill of Ex. & Prom. & Acc.)

per se, does not show that the Endorser has parted with his right, and therefore the action may be made in his name. But after this endorsement is filled up with a direction to pay it to another no action can be brought in the name of the Endorser, for the bill when produced in Evidence, shows he has no interest in it. - Same auth. at supra S. Ray. 271. - 12 Mod. 195. 244 - 2 Stra. 1102. - Salk. 125. 124. 120. - -

And in pursuance of this rule it has been determined that when the holder lost the bill, which was endorsed in blank, and an action of Treason was brought against the Finder in the name of the Endorser, that the holder was a competent witness. Hyd. 96. - S. Ray. 271. - Salk. 120. - I do not say (could) discover on what principle this could be done, if it should appear in Evidence that the holder had really purchased the bill, for in such case he would have a direct interest in the event of the suit. - But upon the supposition that no Evidence of his interest appears except what derived from the circumstance of the Bills being endorsed in blank, he is a competent witness. - -

I have before observed that a Blank endorsement by Targel makes the bill transferrable by manual delivery, because every holder may fill up the blank with his own name. I would further observe, that the negotiability of the bill, the endorsement remaining in blank, cannot be restrained by any subsequent endorsement in full, transferring the interest. E. g. Suppose a bill is made payable to A. or order, and he endorses it in blank to B. B. endorses it in the usual form, "Pay the contents to C."

Lex Mercatoria.

Bill of Ex. & Prom. & Ac. & C.

Now this Bill may still be negotiated altho' the words "or order," are omitted, and no other operative words of transference are inserted. It may be negotiated, I say, because the holder may strike out the intermediate endorsement with his own name & thus constitute himself the immediate indorsee. Holt. 26. 1. 1.
Exp. R. 141. 2. - 4 26. 210. - Chitty, 114. 144. 201. - Peck. R. 225.

And on the other hand, if the Payee makes an endorsement in full, as e.g. "Pay the contents to B. or order," &c. a blank endorsement by the indorsee will make it negotiable by mere delivery. It is true after such endorsement in full it cannot be further negotiated but by an endorsement by the Indorsee. But by his endorsing it in blank it may be negotiated ad infinitum. - You now there will be a regular continued chain of title from the Payee to the holder, whoever he may be. - Exp. R. 141. 2. 4 26. 210. 202. 4 Exp. R. 210.

But a bill payable to order, is not negotiable by mere delivery, unless it is endorsed in blank by the Payee or his indorsee. It is not originally transferable by delivery unless it is endorsed in blank by the Payee - for if it is payable to A. B. C. endorses it - this does not transfer the interest, for B. is a stranger. - -

When a Bill is payable to order, it is not negotiable at all without an endorsement of some kind by the Payee. If he endorses in blank, it becomes transferable by mere delivery - but it cannot be negotiated until an endorsement either in blank or in full is made by the Payee. 7. Mod. 47. - Doug. 611. or 622. - 617. or 622. 1 Th. B. 606. - - -

2nd of Endorsement in full. - - -

Lex Mercatoria.

(Bill of Ex. & Prom. & Notes.)

An endorsement in full is one which transfers the person to whom the endorsement is made. As e.g. "Pay the contents to A. on order." An endorsement in full of this kind contains in itself a transfer of the interest to the person named. Wh. by 1141. - Ryd. 49. - Polier pl. 22. to 24. -

An endorsement in full, makes the Bill payable negotiable, in the first instance, only by the endorser's endorsement. For as on a Bill payable to C. on order, there can be no negotiation but by C. - if an endorsement to D. on order, D. must transfer it. For so long as the successive endorsements continue to be in full, there can be no transfer without an endorsement, until some indorser endorses it in blank, and then it is transferable by mere delivery. 1 Exp. N. 142. note 2. -

The negotiability of a Bill cannot be restricted even by the Payee himself, and of course not by a special indorser but by the express words of restriction. The mere omission of the operative words of transfer does not restrain its negotiability. Thus if a Bill is payable to C. on order - if he endorses it to D. in full, without inserting the words "on order," or any other operative words of transfer, yet it continues to be negotiable. Cons. N. 311. - 1 B.C. N. 295. - 2 Bur. 1216. - Stra 557. - Doug. 617. or 637. -

And if the Payee endorses in blank, and the endorsement remains so, its negotiability can in no way be restricted by any subsequent endorsement, provided it transfers the interest. This rule, and the reason of it, and the authorities to it have been before given. (see 2 pages back, at the 10 p. T. F. -)

B. of

B. of Restrictive endorsements.

Lex Mercatoria.

89

Bill of Ex. & Prom. (Yolo.)

A restrictive endorsement is one, containing express words restrain-
ing the negotiability of the Bill. If then the Payee endorse thus "Pay
the contents to D. only," the endorsement is restrictive and D. cannot
negotiate the Bill. Or suppose the endorsement is "Pay the contents
to D. for my use," D. cannot endorse this Bill, for it appears he in-
has no title to it. The effect of such endorsement, is to stop the transfer
or negotiability, and currency of the Bill. Wing. 617. or 637. - Poth-
ier. 168. - Chitty. 119. 120. -

The Payee or Indorsee having the absolute property may him-
self the payment to whom he pleases, & thus destroy the further ne-
gotiability of the Bill. It was formerly considered otherwise. It
was once thought, that if the bill was originally negotiable, its
negotiability could never be restricted. But this is not now Law.
Thus in the E. g. s. supra "Pay the contents to D. for my use," D. can-
not endorse the Bill, for by the force of the endorsement it ap-
pears he has no interest. Suppose the Payee had made a blank en-
dorsement, and then his transferee makes an endorsement thus
"Pay the contents to C. for my use." Now C. cannot by trans-fer-
ring to D. enable D. to fill up the blank endorsement, because C.
the 2nd Indorsee appears to have had no interest, and therefore
he can transfer none. He appears a mere agent by the terms
of D's endorsement. 2 Buss. 1227. - 1 B. & P. 299. - 10 Bth. 277. -
1 Shun. 163. 42 R. 28. 49

But I conclude upon principle that if the endorse-
ment, tho' restrictive, transfers the interest, the last rule will
not hold. I form my opinion here from analogy. I have
no authorities to this point. Thus suppose a Bill is made pay-
able to A. or order, and he endorses it in Blank to D. and D.

Lex Mercatoria.

Bill of Ex. & Prom. & Notes.)

makes a restrictive endorsement to B. as "pay the contents to B. only," & B. endorses it to W. Now I conceive W. may erase the endorsement restricting the payment to B. and give up the Blank endorsement to himself - For here B. the 2nd Indorsee has the interest. He can show his title by the endorsement. The reason of the last rule does not apply here for in that case the the endorsee had no interest - he was the mere agent of the endorser - whereas in this case the 2nd indorsee has the interest, as is manifest from the terms of the endorsement. ~ ~ ~

A transfer it seems cannot be made after acceptance for less than the amount due on the Bill. If a transfer could be made of a moiety to A. & a moiety to B. on the same principle it might be divided into a thousand parts - and if such endorsement were valid, it would subject the acceptor to two, and as the case might be an indefinite number of actions. If it is so endorsed, the acceptor is not bound by his acceptance, and the holder, in either one of the parties who have an interest in the Bill, can nevertheless make a claim upon him. L. Ray. 360. - Coath. 466. - Salk. 651. - 12 Mod 212. ~ ~ ~

I conclude however, tho' I have no authorities, that an endorsement for part of the amount after acceptance would bind the endorser. The reason applying to discharge the acceptor does not apply here. There the rule was to protect the acceptor from a multiplicity of actions, which would otherwise arise in consequence of a division of the interest in the Bill, and to which division he never consented - but in the latter case, the endorser is the promising cause, and by dividing

Lex Mercatoria.

(Bills of Am. & For. & Notes.)

the interest he will, I trust, make himself liable, and the Law will not be reluctant to protect him. —

And with respect to the liability of the acceptor — if a bill is endorsed one half to A. and the other to B. and he accepts it in this form, he will be bound by such acceptance — For by accepting the acceptor to such divided interest specified by the endorsement, and this I think justifies the supposition above, that an Endorsee is bound for a divided endorsement, For surely if the acceptor is bound by his acceptance where the interest is divided, the Endorsee making it, a fortiori is bound. Beaver 266. —

It runs then from these last rules, that by such endorsement of part to A. and part to B. &c. that ye. Drawers can never be subjected except in the unusual case of the endorsement made before the Bill is drawn. J. Ray. 260. — Salk. 65. — Fent. 466. —

And as the acceptor who accepts before endorsement is not bound by an Endorsement of a divided interest, so neither is he bound by an endorsement of part to A. tho' the other part is not endorsed at all, and for the same reason, he cannot be liable at any rate to two actions. But tho' the acceptor cannot be made liable by such endorsement — yet if his part is paid, the acceptor will be bound by an endorsement of the residue, for the rule is to be paid. Thus he does not incur a twofold liability — his liability is single and it is not material whether it extends to the whole or not, it is sufficient if it extends to what is due. 2 Wils. 262. — J. B. 260. — Salk 68. —

To complete the transfer the Bill is to be delivered to the transferee. This rule is applicable to all written contracts that by 61-115-121. —

Lex Mercatoria.

March 14. 1813. Lecture 10th

I yesterday explained the mode in which transfers are made - I shall next treat,

of the operation of a Transfer.

A transfer of a Bill by endorsement is similar in its effect to the making of a new Bill; & the Indorser is in almost every respect as a new Drawer on the original Drawee -

This will appear manifest if you consider the structure. The original Bill is an order to pay the money to the Payee. - the endorsement is an order to pay, it to the indorsee. So they are almost precisely the same. Stua 133. - 1 Bur. 674. - 3 Salk. 64. - 2 Shen-
dy 41. 495. 501. ~ ~ ~

And a Promissory Note when endorsed bears a strong analogy to a Bill of Exchange. Indeed the analogy is very strict. Before endorsement it does not resemble a Bill of Exchange at all. It is a promise by A. to pay money to B. - whereas a Bill of Exchange is an order drawn by A. upon B. requesting him to pay the money to C. - when the Promissory Note is thus endorsed, the endorsement is an order given one to another to pay the contents to a third person. The Indorser is in the nature of a Drawer. The Promisor character corresponds with that of the Drawee of a Bill. The Indorsee of a Promissory Note is as the Payee of a Bill. And on this principle of analogy, it has been determined that a Promissory Note thus endorsed may be declared on or pleaded as a Bill of Exchange. The Indorser being virtually the Drawer, the Promisor virtually the Drawee, and the indorsee virtually the Payee. - 4 T. R. 149. - 6 Mod. 29. - 1 Bur. 670. - 1. Mar. 242. - 1 Salk. 132. 133. ~ ~ ~

Lex Mercatoria.

(With of Ex. & Term? Notes.)

Hence also the obligation to which the endorsement of a Promissory Note subjects the indorser in favor of the indorsee is the same as that which the assignment of a Bill subjects the Assignor in favor of the Assignee. A transfer by bare delivery, if made for an antecedent debt, or for a debt occurring at the time for a valuable consideration (as for goods delivered at the time) subjects the party making it in favor of his immediate assignee to an obligation similar to that created by endorsement. If then a Bill is transferable by bare delivery (as we have already seen it sometimes may be) and it is delivered over for an antecedent debt due to the transferee, or for one created in his favor at the time, the party transferring it is under the same obligation to him as if he had made the transfer by endorsement. 7 T. R. 64. - 6 T. R. 52. - L. Ray. 924. - 12 Mod. 247. 404. 521. -

There was formerly a distinction taken on this subject, which I will not take time here to explain, as it has long since exploded and is not now. See Holt 298. 4. - Selk. 124. - 2 Selk 68.

The rule above does not obtain, if it is expressly agreed between the Parties at the time, that the assignee shall take the Bill, & himself assume the risk. - for he agrees to take it thus. 7 T. R. 65. 6. - Holt. 121. - Chetty. D. 124. - If then a Bill is transferred by bare delivery, (the assignee does not assume the risk at ante) & the Drawee fails to pay it, the assignee may sue the assignor on the consideration of the transfer; i.e. if the debt was created by the sale of Goods, he may bring an action for the Goods sold, or he may sue for the antecedent debt if that was the consideration of the transfer. He cannot sue of the Party transferring on the Bill, (as being a party to the bill) for by the supposition his name is not on the Bill, and he is not a Party in. But he may

15 East. 7

3 H. 760
5 Dec 1525
Up to P.

Lex Mercatoria.

(Bill of Ex. & Prom. & Ex.)

receives upon the antecedent or new creation debt. But I repeat we cannot recover on the Bill, for no person can be a party to a Bill, unless his name appears upon it. Except the holder. - 7 T. R. 556. - D. H. 175. - L. Ray. 924. - Ryd. 90. 91. -

And for the same reason (viz. that a party transferring by delivery ceases to be a party to the Bill) he cannot be liable to a subsequent assignee - He is liable only to his immediate assignee - for not being a party to the Bill a subsequent assignee cannot maintain an action to him as a party, and as by the supposition he does not transfer the Bill to a subsequent assignee. L. Ray. 924. - Carth. 275. - D. H. 1525. - 1 Shaw. 130. - Exp. Di. 61. - Chitty 125. -

And further - there is still another Exception to the general rule, i.e. the Assignee transferring by bare delivery is not liable to the Assignee, if the transfer was (by) or a discount, by which is meant by way of Sale. The sale of a Bill then is like the sale of any other article. Now I take the true ground of distinction to be this - that there is no ground of action at the time - there is no debt on which an action can be maintained. Now if A. being indebted to B. transfers a Bill to him by bare delivery & it is not accepted he may have an action for the antecedent debt, or if the consideration of the transfer was goods sold he may have an action for those goods. But in case of a Sale there is no debt antecedent - or contingent - or simultaneous (See line above) there is no indebtedness on which the action can be maintained. The person taking a discount takes the risk of loss unless there is a warranty. - 5 T. R. 757. - 1 Exp. Di. 247. - Ryd. 94. 91. -

Where there are several parties liable on a Bill, the holder may pursue his remedy to any one alone or to each separately.

Less Mercatoria.

Bills of Ex. & Prom. Notes

Thus when the Bill is dishonored, the holder may sue the drawers - and he may sue the Indorser - and all the Indorsers - but he cannot join them in one action. The contracts of each is separate. And if in this case the holder pursues one judgment, and takes him in execution, this does not discharge the other parties - or if the holder, after committing one to prison, subsequently discharges him (from prison) this does not discharge the other parties - they were still liable - or if one is taken (or seizes the business) - either committed to prison or not, becomes an absolute bankrupt, & obtains an act of insolvency, this does not discharge the others. 2 D. R. 1735. 2 T. R. 185. 425. 1 S. R. 670. 1 Salt. 514. ~ ~ ~

If the holder of a Bill, transferable by bare delivery loses it, and it comes into the hands of a bona fide holder, who is ignorant of the fact, and who pays a valuable consideration for it, he may recover to the Prison Parties, & between the finder, & the bearer undoubted by the interest is in the former, for the finder paid nothing for it and he could not recover. But never in case of a bona fide holder, not a finder. The rule is the same if the Bill was stolen instead of lost if the thief in such case transfers it to a bona fide holder, having no knowledge of the fact - he may recover upon it, tho' the thief could not. 1 Bos. 452. - 3 Bos. 1516. - 1 S. R. 734. - Salt. 126. 7 T. R. 427. 2 Salt. 71. ~ ~ ~

But if the holder in the case supposed received the Bill after it had become due, he comes within the rule laid down, i.e. he is liable to the presumption which may be founded on the slightest circumstances, that he knew the Bill was lost or that the transfer was unfair - and according to some opinions he is liable to all the Equity to which the Bill in the hands of the thief or finder was liable - even without the aid of such presumption. 1st, last

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

opinion is not well founded. I think now justified - but the former is undoubtedly true.

And in either of these cases (when the bill is lost or stolen) the holder has not paid a good consideration so that he could not recover, still if the Drawer not having notice of the loss, pays it to the holder he is protected in having made the payment, the same as if he had paid it to the real owner. Then what means had he of knowing the holder was not the true owner? none. A note presented. No hint for payment. There is no reason then but we should raise a Question whether the person presenting is in fact the owner or not - and then reject him by no process. He is compelled to pay to the holder when the Bill is presented. Ex. & Prom. 2d. 1st. 607. ~ ~

But if a lost Bill is paid to the holder, and in the usual course of business, as before the day of payment, the Drawer it seems may be compelled. No fear, the amount goes again to the true owner. Thus when a Banker's check was dated for money and presented and paid before it bore date, and it appeared that a man lost it, it was held that the Banker, who paid it over again to the person who had lost it. 1 Ex. & Prom. 40. 151. - Claitor v. 25. 150. 151. ~ ~

The rule is the same if the Drawer, who pays it to him, it is due. ~ ~

If a Bill transferable by endorsement only is transferred or negotiated by a forged endorsement the holder gains no interest in it - neither he is the person who forged it or not. No subsequent holder can recover upon it. Then, when the Bill is transferred by endorsement, a holder who is bona fide of

Lex Mercatoria.

Principle of Ex. & Prom. (Notes)

any fraud about the bill must recover, yet when a bill or indorsement is forged the holder shall not recover, for the holder must always assume the risk of its being genuine. - For were it not so, the Mercantile Law would be instrumental of much mischief - as thereby the person purporting to be the Drawee or Indorser would be made liable on an instrument which was not his act & Deed. - If then one claiming money under a forged indorsement should receive the money of the acceptor the latter would be compelled to pay it over again to the true owner. 1 T. R. 607. - 1 T. R. 24. - Weng 617. or 627.

It is a rule of Public Mercantile Law that if the Drawee of a Foreign Bill whether accepted or not, ^{if} ^{it} is lost or delivered to a wrong person, he must give his Promissory Note payable at the same time as that specified in the Bill, & for the same amount. - If he refuses to do this a protest for non acceptance or non payment may be made - and after the original time of payment has elapsed an action by the true owner may be maintained w. him. - Beaver pl. 148. - B. N. P. 271. ~ ~

There is no such rule as the above, as to inland Bills of Exchange. They are governed here by the Mercantile Law of England. as they are there. - Chitty. 127. R. ~ ~

If the Drawee absconds - i.e. I suppose after acceptance the holder may protest the bill for better security - & then he must give notice to the prior parties of the Drawee absconding. - He may protest the Bill I say for better security, and if that is refused he may protest it for _____ + I conclude that the rule relates only to those cases, where the Drawee absconds after acceptance, For it is a rebellion to talk of protesting for better security, before acceptance, for till then he has given no security.

Lex Mercatoria.

Bills of Ex. & Prom. Notes.

security at all. L. Ray? 742. - Deane pl. 22. 24. to 29. -

This latter security is to be given (when given at all) by a 3^d person who engages under the Protest to be bound as principal for the payment. - Com. D. title "Merchant" F. 8. - Chitty 129. -

I have then traced the Bill of Exchange from the act of Drawing to the acceptance, and through the transfers, & the various courses to be pursued by the holder, on the Drawers refusal to accept. - I shall now treat,

of Presentment for Payment.

On this point the general rule is that the holder must present the Bill to the Drawee for payment at the time fixed for payment - if such time is appointed in the bill, & if not within a reasonable time. I have so often had occasion to mention what is a reasonable time, that a further explanation of it here is unnecessary. -

I have further to observe that presentment for payment must be made whether the Bill has been accepted or not, and even if the Drawee has refused to accept & notice of this (i.e. of non acceptance) has been sent to the Prior Parties still it must be presented for payment; for the Drawee may not have had funds in his hands at the time of refusal, and therefore have had sufficient reason for not complying with the request contained in the Bill, but he may now have funds in his possession, or since his refusal to accept he may have changed his mind and become willing to pay. 2 Burr. 669. - 7 T. R. 541. - Ryd. 120. - to 125. - Selk 127. - Shaw 1047. - 2 B. & C. 470. -

Lex Mercatoria.

Bills of Ex. & Prom. Notes.

Of course if the holder does not present for payment as the rule requires, he loses all remedy to the principal party, same with. Ex. & Prom. 155. D.N. 142. ~ ~

If the acceptor is dead at the time of presentment must be made to his personal representatives if he has any, if he has none, presentment is to be made at the acceptance house or last place of abode. Pothier pl. 176. ~ Chitty 122. 126. also by Book 2^d ch. 10. d. 34. ~

But a neglect to present for payment may be excused, as a neglect to present for acceptance may be, i.e. for the same causes which will excuse a neglect to present for acceptance. Thus if the Drawee (acceptor) has no effects of the Drawers in his hands, the holder need not present for payment. So if he has absconded. ~ Chitty 202. 3

The acceptor himself can never defend on the ground of delay in presenting for payment, tho' the principal party may. Nor can the acceptor ever defend on the ground of indulgence (as a prudent time) given to any of the principal parties, as the drawer, Indorser &c. for the acceptor is the party first liable, and it is no injury to him that he has not had notice of such circumstances. Besides it is always presumed that he is the party who pays the bill. The presumption is that he has effects of the Drawers in his hands. ^(Singularly Drawee) Donch 235. for 247. 165. 166. 246. ~ Chitty 82. 133

It has been said that an action will lie by the holder to the acceptor himself without presentment for payment - for that he being the first party liable he is bound to seek the holder - and not the holder to seek him.

Lex Mercatoria.

(Bill of Ex. & Prom. & Notes.)

This is the rule of the C. L. in ordinary cases. If I am bound in a bond to pay a certain sum of money, I must seek the obligee - and pay the money at my peril, and he is not bound to seek me. But this rule as applicable to the acceptance of a negotiable instrument is very questionable, and I think it is not defensible. For in negotiable instruments transmissible from one to another the acceptor may not, and generally cannot know who has the Bill. He may search the world over for the holder and not be able to find him even then. The subsequent receivers are often strangers to the prior holders as well as the acceptor. I am confident that the rule of C. L. as to ordinary choses in action cannot apply in this case. I take the latter opinion to be that the holder must present for payment, and if he does not, the acceptor is discharged. As to the first opinion see, 10 Mod 34. - Dougl. 72. 10 K. Contra. opin. see, Stea. 222. eng. 2. Poth 140. - 1 Bond 98. -

In the case of Foreign Bills if the course of Exchange has altered between the time of drawing & the time of payment, the acceptor must pay at the rate of Exchange when it becomes payable. For if I should this day draw a Bill on London when to-day Foreign bills are at par, and when the time of payment arrives they have depreciated 20 per cent. it is evident that if the acceptor were obliged to pay at the rate of Exchange at the time when the Bill was drawn he would lose 20 per cent. He must pay them at the rate of Exchange when the Bill falls due. Poth. 174. - Chitty 133. Dougl. 78

However the Question whether the holder in action

Lex Mercatoria.

Bill of Exchange Prom. Notes.)

ordinary case it would be to demand for payment may be, yet when the engagement of the acceptor is to pay on demand or after demand and the bill is not presented for payment the acceptor cannot be required to pay or insist on the want of presentment for payment as a defence. This rule is well settled. 1 Esp. 238. Chitty 134.

If the acceptor appoints payment to be made by another person as at his Bankers office, he and all the other parties may insist on presentment at that place, and if presentment is not there made, they are prima facie discharged. Still if it is proved that such banker had no notice of the acceptance in his hands the rule does not operate. 2 Esp. 1192. 3 H. Bl. 509.

This presentment for payment is to be made by the holder or his agent. Mr Chitty adds that the agent must be competent to give a legal acquittance or discharge. I cannot think this is Law. If he is to give an acquittance it must be by deed, and without an appointment by Deed, or by Power of Attorney, he cannot bind his principal by deed. There is no need of an acquittance, for the blank may be filled up with one. The acceptor in tendering the money cannot by law demand a discharge. And if he should plead he tendered the money to the holder and would have paid it, provided he would he would have given him (the acceptor) an acquittance. his plea is not good - now this is conclusive, and I take this to be the rule in all cases. - A plea by the Debtor that he tendered Do. and would have paid it provided the Creditor would have given him a discharge is not good, he has no right to insist upon an acquittance - the L. J. does not compel the other parties to give him one - upon these principles I am fully convinced that it is unnecessary to immaterial whether the agent is competent to give a discharge or not. 1 Esp. 238. 3 H. Bl. 127. 10 Alth. 236. Chitty 134.

There is a rule laid down by Mr Chitty who seems to imply a negative. Chitty 134. see also The Do. 238. 1 Esp. 238.

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

time of presentment for payment is not the time as the time of presentment for acceptance, when the time is not expressed in the bill or note. Now, the time of presentment for payment must depend on the circumstances of the case. It must be made in a reasonable time, that is a reasonable time has been before illustrated. It is the same in this case in the case of presentment for acceptance. (Ex. 12. 170. 172. 176.)

I have observed that when the time of payment is appointed, that appointment regulates the time in which payment must be made. Still in this case the time of payment is not at the time mentioned, for according to Lex Mercatoria "days of Grace" are allowed. It has been said a bill is payable on sight or on demand it is said days of grace are not to be allowed. To this there are contrary authorities, and the latter I take to be the better opinion, and so far as I have been able to ascertain the latter opinion has been uniformly followed in the United States. If these latter opinions are sound the rule will be general that days of grace are to be allowed in both cases, i.e. when the bill is payable at a fixed time, or on sight or on demand. - Ex. 12. 170. 172. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

The American Authorities are all in favor of days of Grace in all cases. 1 Johnsons Cases. 224. 2 Cases. D. R. 24 D. 2 Cases. 19 D. 2. 2 Cases 14 D. 2. 2 Cases.

If a bill is drawn at a place using one style, & payable on a day certain, at a place using another style, the time of payment is to be determined by the style at the last place. For the one the act is to be done. If then a bill is drawn in the United States payable at a place using another style, the time of payment is to be determined according to the last style. 1 Johnsons Cases. 224. 2 Cases. 19 D. 2. 2 Cases. 14 D. 2. 2 Cases.

Lex Mercatoria.

Bill of Ex. & Prom. Money

I say in this Country it is to be believed the rule is universal that the Statute. Statute 120. - Deince. pl. 288. - Statute 9. 10. -

the days: - then are always - putted according to the term of the place where payment is to be made - and payment is to be made on the last day of grace. If then a Bill is drawn payable on the 1st day of January, payment is not to be made till the 4th. The acceptor is under no obligation to pay till the last day, and therefore it is necessary to present the Bill for payment before that day and in England. and in this Country Sundays, and Holid. days are included - If then a Bill is payable on Saturday, Sunday is counted as the first day of grace Statute 140. 142. - Statute 139. -

If then the last day of Grace happens to be on Sunday in England. on a great Holid. day as e.g. Christmas, the business should be made on the second day of grace; and if the Bill is not then paid it is considered as dishonoured. Suppose then the Bill is payable on Thursday, payment must be made on Saturday, for the last day of grace is on Sunday, on which day no business can be transacted. The acceptor here can claim but 2 days of grace, for as I have observed days of grace are matters of indulgence, and shall not be so constructed as to give the party 4 days. Statute 74. Statute 122. - Statute 120. -

But when the days of grace are all days of business, payment must be made before the last is a nullity. No protest can be made for non-payment before, or if made cannot affect the person of the acceptor. Statute 126. -

In the last mentioned the word "acceptor" is used to designate a certain period of time sufficient by law for the acceptor to pay for payment of the bill drawn in one Country and payable in another.

Lex Mercatoria.

Bill of Ex. & Prom. (Notes).

E.g. The Merchant in London sees in the bill, by custom of
drawing Bill of Exchange on the Merchant in Amsterdam, pay-
able at a certain time (as date (as I think) - and this
length of time has by long usage become well known by the term
usance - which has now been converted into a Law term - If then
a Bill is drawn on Amsterdam (at 3 months E.g.) the day of
payment is to be computed according to the length of an us-
ance at Amsterdam. Bill 141. -

And foreign Bills are drawn in this manner, i.e. at
usance. The length of time denominated by an usance is different
in different Countries. Bill 4. -

If a Bill is payable a month or months after sight
or date, the computation is by Calendar and not by Lunar
months. This is opposed to the general rule of the Law - for at
O. S. Lunar months are in the computation. E.g. if a lease
is made for a certain time as 6 months, the term expires in
34 weeks or 6 Lunar months - and so if a lease is made for
6 months after date the time is computed according to the
Lunar months. Baron's Ple 253. - Hyd 6. - Pl 143. - For the com-
mon Law rule see Co. L. 141. - 6 T. R. 224. - 2 Vent 333. -

If a Bill is payable at a fixed period after sight the
time is computed from the day of acceptance or presentment
for acceptance. Car. Dec. 11th March 4th E. 7. 6 T. R. 212. -

Where no certain time of payment is pointed out in
the Bill on acceptance, the presentment for payment must
be within a reasonable time - what is meant by a reasonable
time has been by usage sufficiently explained. Thus a Bill drawn
payable on demand on sight presentment must be made

Sex Mercatoria. ~ ~

fills of En. P. from ? (A. M.)

within a mammalian time according to the common view of the
Plateau & Indian. - L. Kay^d 623. 1798 1800 1801 1802 1803.

The day's wages being appointed or sustained, payment
in full payment must be made within a reasonable time, the
representation of the day within the usual hours of business of Nov. 1821
Chas. B. 1821. 1821. 1821. 1821.

Disbursement for payment should be made in your
and entry by the name of the Bill on his account. In as much
as the payment should be made in general entry by the name
of the Bill in his account. If then payment is made to the
original Party, after he has negotiated the Bill, it will be an
all the whereas, for the Party is not the owner of the Bill, he has
disposed with his interest, and payment has been made to a
third person. Ido. p. 164. - Chetty 149.

Of a Bill is payable to A. on order, & in the name of B. payable with interest on order, to A. on his order, and not to B. on his order, as B. has the legal interest & B. only the Equitable (the interest), as it is not known on or ordered in the name of B. - Bank B. - 10th Dec. - 1871.

That the instrument for payment is to be rendered within the usual term of limit, yet it is a general rule that when money is to be paid on a day certain, the acceptor or the party liable is allowed until the last moment of the last day of grace to pay it in full. He has, nevertheless, to pay on the

Lex Mercatoria.

Bills of Ex. & Prom. & Notes.)

first of January. Now if he pays on that day he discharges himself. The holder however must present within the usual hours of business yet the acceptor can claim the whole of the last day of grace in which to make the payment. This is a rule of the English municipal Law. - 1 Roll. R. 149. - 1 Edm 247. 4 T. R. 173. -

The next point laid down does not extend to Foreign Bills. The reason is in Foreign Bills a Protest is to be made - and when necessary it must be made on the day of payment, i.e. on the last day of grace. And if the party bound to pay could delay until the last moment of the last day, a valid Protest could not be made. The acceptor in case of Foreign Bills then cannot discharge himself only by payment of the money, and this is to be done early enough in the day as to leave time sufficient to make a Protest. Ryd 121. 4 T. R. 174. -

For the purpose therefore of leaving nothing more uncertain on this subject, it is a rule that Foreign Bills shall be paid within the usual hours of business. In case of Inland Bills the first general rule holds. The acceptor as to time is allowed the whole day to make payment, & no protest is necessary, and therefore the reason in case of Foreign Bills does not apply as to Inland. 4 T. R. 170. - Bailly 67. - 1 Edm 140. - In Ryd 121 and 4 T. R. 174. - a doubt is expressed as to the rule above applying to Inland Bills of Exchange. -

If a Bill drawn here is payable in a Foreign Country, & in Foreign Coin, the value of which is ascertained, it is to be paid according to the value of the Coin at the time of drawing. This rule amounts in effect to the one yesterday laid down as to the valuation of Exchange. -

Lex Mercatoria.

Bill of Ex. & Prom. (Edm)

Domestic, payable in this dollar, which may be of a given amount, and before the day of payment they reduce 10 per cent. Thus if the Bill is for 100 and payable in this dollar, one hundred and ten will not discharge the obligation. They will amount in value to not 40 & owing the 10 per cent. depreciation. Sec. 2. 2. Chetty 184.

If the holder compounds with the acceptor without [consent] the agent of the other parties these latter parties are discharged. For by compounding with the acceptor, as e.g. to make 30 per cent. on the face of the Bill, he determines the liability of the acceptor, and knows if he were compelled to pay, he did not recover the difference of the acceptor, and now having done this, the holder cannot compel the foreign parties to pay the residue. Chetty 182, 183.
Case Bank. 7 Jan 180.

But the rule is otherwise if the holder merely receives a dividend the acceptor being a bankrupt; for this is not he can do - he does not voluntarily make this compromise; for the law has determined him of receiving any more, is out of the acceptor; and in such case it is an advantage to the foreign parties that the holder should receive from the acceptor what he can get. Chetty 185.

It has been said that if the holder receives of the acceptor, a part more than is due, the rest receives in full satisfaction, yet if he does this without the consent of the other parties they are discharged. And it is only by receiving a part, he makes his election to receive it of the acceptor. I am unable to determine how he makes his election by receiving a part. There are very respectable opinions that the holder must state it is true that when he receives a part it is his duty to inform the foreign parties of the non-payment of the rest. If he gives this reasonable notice there is no way in which the foreign parties can be injured by his receiving a part, but the propriety of it might be questioned as to them.

Lex Mercatoria.

Bills of Ex. & Prom. (Note.)

I think the rule indispensible. For the rule as 1st laid down see L. Ray. 744. - Stea 749. - D. N. P. 278. - Contra see D. N. P. 271. 279. 279. 9. - L. Ray. 745. - Whitty 156. 160. - Books Bound. Sec 167. -

It is said by Mr. Whitty to be doubtful whether the party bound can insist on a receipt for the money as a condition for payment. I trust he cannot. It is certainly true that in cases not falling under Lex Mercatoria he cannot; neither can he, therefore, where they do. He can call witnesses to evidence the payment & is moreover entitled to the Bill itself, being in his possession, is prima facie evidence of the fact. L. Ray. 742. - Stea. 179. 180. 79. 80. - 2 D. N. P. 21. - 1 Binn. 192. - Parsons. 145. -

A general receipt endorsed on the back of the Bill & not naming the party paying, is prima facie evidence the payment was made by the acceptor. The reason is the acceptor is the primary joint liable, and if payment has been made the presumption is it was made by the acceptor. If then payment is made by the Drawer or Indorser, the receipt should express the party paying. Stea. 180. - Whitty. 157. 158. 159. -

If payment is refused, the holder must protest the Bill if Foreign, and whether Foreign or Inland must give notice of this fact to all parties to whom he is liable to resort for payment, and if he does not take this course, the said parties are discharged, for as they are discharged by want of notice of non-acceptance, so also the holder neglects to give notice of non-payment he cannot claim on them. Whitty. 154. 155. -

The rule in case of notice of non-payment is the same as that of giving notice of non-acceptance, viz. that the holder must give notice to all parties to whom he is liable to resort for payment. See Stea. 180. -

Lex Mercatoria.

Bill of Ex. & Prom. (Nob.)

If part only is paid, the Bill is to be protested, if Foreign & on non-payment of the residue, and whether Foreign ^{or} Inland, notice of the refusal is to be given to the prior parties except where notice is waived or excused, and for the purpose of ascertaining when it is waived or excused see the rules and authorities before laid down in case of non-acceptance.

In certain cases under the Stat. 4 and 5. William 4. Inland Bills may be protested, but this is done for the purpose of certifying the date of interest and charges as well as the amount of the Bill. The effect of this Statute is only to give the holder an accumulative remedy. It is not necessary for him to protest the Bill in order to subject the party to the amount of the Bill, for so far he was liable before the Statute was made, but if he would recover interest and charges also, he must according to the Statute, protest the Bill. L. Ray. 1. 1. - 2. 5. 1. 469.

Protest for non-payment of a Foreign Bill must be made on the day of refusal, and then notice must be sent to the Prior Parties by the most ordinary conveyance - by the mail if the same day is possible - and if not, by the next ordinary conveyance, and mail or otherwise. 4. T. R. 174. - L. Ray. 1. 1. 42. - 2. 5. 1. 469.

In the case of Inland Bills however, it seems not to be necessary to give notice until the day following the day of refusal to pay, and indeed in the case of inland bills upon his right to delay payment till the last moment of the day, it cannot be given. 1. T. R. 1. 1. 169. - 4. T. R. 176.

Notice however in this case is to be given on the day following if possible, otherwise the holder is in danger of losing his money.

Lex Mercatoria.

Bill of Ex. & Prom. Notes.

I say notice must be given, I mean notice (as the case may be) must be sent, - 1 T. R. 1689. - Long 518. - 2 H. Sal. 303. -

When a Bill Foreign or Inland is dishonored, payment supra protest may be made for the honor of the Drawee or an Indorsee. You recollect this might be done in case of non-acceptance, so also when the acceptor refuses to pay, payment supra protest may be made. Beaver, l. 54. - Walt. 103. 113. -

But if the Drawee has once accepted, according to the tenor, he cannot pay supra protest for the honor of an Indorsee, for as to him the acceptor is bound by his previous act of acceptance. Beaver, pl. 91. Chitty, 163. -

But if the acceptor has no effect of the Drawee he may after an acceptance according to the tenor of the Bill, protest it and then pay it for the honor of the Drawee, and by so doing he acquires a remedy on the Bill. For as to the Drawee and acceptor, the Question depends upon whether he has effect or not; but the want of effect cannot vary the liability of the acceptor as between him and the Indorsee. As respects the Drawee, he is bound by his acceptance.

Mr. Chitty (163. 164.) says the payment in such case will give the acceptor a remedy on the Drawee. But this is not the case, for he has a remedy on him whether he, the acceptor, pays the Bill according to its tenor, or whether he pays supra protest for the honor of the Drawee. If he pays it according to its tenor, his payment is indeliberate upon protest; if he pays it supra protest his payment is on the Bill, so that in either case he has a remedy, the only difference is in the manner in which it is sought. And for this the acceptor may pay the Bill supra protest for the honor

Lex Mercatoria.

Bills of Ex. & Prom. Notes.

Drawer or Indorser, so that he may pay for the honor of others or things, and leaving paid upon protest, he has a remedy on the Bill to the party for whose honor he paid and against all the parties. Chitty, 164. —

March 20th 1812. Sect. 12th

In my last Lecture I concluded the observations I had to make upon Bills of Exchange, except a few as the remedies on them, of which case after. I shall now treat — of,

of Promissory Notes.

A Promissory Negotiable Note, is a direct engagement in writing to pay a sum of money, to a person therein named, or to his order, or to bearer. It is, in other words, a direct engagement to pay a sum of money to a person named, containing operative words of transfer. 2 B. & C. 407. Regd. 30th 1812. Chitty, 165. —

A Promissory Note is somewhat in the nature of a Bill of Exchange drawn by the maker on himself. The analogy, however, on the laws does not however arise till the Note is negotiated. When negotiated it resembles a Bill of Exchange. The maker of the Note is like the acceptor of a Bill. The maker promises to pay is the primary first liability, the same as an acceptor of a Bill. It is held that a Promissory Note is not a contract on which an action could be founded, but more like a contract of a Bond promisor. So that if it gives a note to B. and recites his name, it is not a contract on which an action can be founded upon the Bond contract.

Lex Mercatoria...

Bill of Ex. & Prom. ? (Nas)

the terms of the Bill, and the Indorse of the Note, the same as
 Page of the bill 15 Dec. 576. ---

Danish Bank Notes, are in reality nothing more than
 species of Promissory Notes given by Bankers. When these were first de-
 termined to be negotiable till since the Act of 1794, which
 made all notes negotiable - the Bankers have since they were frequen-
 tly assigned. - Act 1795. 560. - Act 1799. - Act 273. - Act
292. - Act 1800. - Act 20. 1801. -

Danish Bank Notes being payable on demand are in-
 cited and considered as Cash whether payable in notes or in specie, &
 this by the current of the mercantile world. They constitute a
 circulating medium. Act 1794. - Act 1800. - Act 1801. -
Act 1802. - Act 1803. - Act 1804. -

These Danish notes as they are regularly ^{transferred by} ~~assigned~~
 remain as cash & just remarked treated as such. When
 are indorsed they may be declared upon as Bills of Exchange
Act 1793. - Act 1802. 1803. - Act 1804. -

Danish notes again are really nothing more now but the
 an Promissory negotiable notes given by a corporate banking com-
 pany. They are therefore subject to the Statute concerning
 Bankers. This in fact they are nothing more than negotiable
 Promissory Notes yet they are considered as money - &
 will pass in a full nomine act. if a man should desire to
 withdraw to 100. these notes will be in- ded in the transac-
 tion. They are not actually money - but are most commonly
 treated as such.

These Danish notes are generally payable on demand
 at the same as Danish notes; and are not for any

Lex Mercatoria.

Dict. of Ex. & Prom. Notes.)

considered as securities for money received, but as money itself. 1 Q. B. 437. - 3 B. & C. 502. - 4 B. & C. 330. -

But the Bank Notes are considered as money for most purposes. An action for money had and received will not lie to the holder of a Bank bill unless he has received the money on them. For this action for money had and received, will lie only for money, proventus, proventus. 1 B. & C. 424. - 1 B. & C. 197. - 1 B. & C. 239. - 2 B. & C. 1269. - 5 B. & C. 2049. - 3 East 169. -

Bank Notes again are not a lawful tender, provided the creditor objects to them at the time on account of their being Bank notes. But if he does not object on this account, the tender will be good. 1 T. R. 504. - 1 B. & C. 614. - 1 B. & C. 662. - 2 B. & C. 624. -

No particular form of words is necessary to create a Promissory Note. Any writing in general containing an Express promise to pay money, and also the proper words of transfer is a promissory negotiable note. Hence a Promise for value received to account to B on or for a certain sum, operates as a promissory note - but the word "account" is used instead of the word "Promise." 1 B. & C. 662. - 1 B. & C. 629. - 1 B. & C. 1396. - 1 B. & C. 32. -

But the mere acknowledgement of a debt without words amounting to a Promise, will not operate as a Promissory Note. Thus a memorandum used in England to evade the stamp duty consisting of the letters "I. O. U." has such memorandum is evidence of indebtedness - but it is not a Promissory Note. 1 B. & C. 426. -

And the same requisites are necessary to a negotiable Promissory Note, as to a Bill of Exchange. It must be payable in money and money only - it must be payable at all events and not upon a contingency. The same rule as to the Bill of Exchange applies

Lex Mercatoria.

Bill of Exch. & Prom. Note.

as to Promissory Notes, 1 Burr. 323. 6 T. R. 440. 4 T. R. 149. 7 T. R. 243. 7 B. 1. 149. 11 B. 1. 291. 4 Ch. 242. . . .

If an instrument otherwise containing a promise to pay wants either of these requisites, it is not a negotiable Promissory note. It is evidence of a verbal agreement to pay, and as between the parties may be declared on as a promissory note. 7 T. R. 243. . . .

By a late Statute in this country, no action can be brought on a Promissory note unless within 6 years from the time the right of action accrues. This Statute, in this respect is the same as that of 21 H. 6. c. 12 in England. As to Promissory notes the limitation is 17 years. The Statute provides that no time during which the maker is out of the State is not to be computed as part of the time. . . .

It is unnecessary for me to pursue the subject of Promissory notes any further. - I shall next consider

The Remedies the Holder may have upon a Bill of Exchange or Promissory Note.

The usual action brought on a Bill or Promissory Note is that of Assumpsit. And this is said to be the only remedy, when there is no immediate privity between the parties as between the indorser and holder. See. Wilby 174. . . .

The holder may maintain this action in general against the parties severally. He cannot join the different parties in the same suit. The maker and indorser of a Promissory Note cannot be joined any more than the maker and indorser of a Bill of Exchange. They may be all liable at one & the same time.

Loose Mercatoria.

Bill of Ex. & Prom. ? Notes.)

Yet their liability is not identical - the cause of action is not the same - Each party makes a distinct contract, therefore there can be no joint action of them. 4 T. R. 476.

Thus the action of Assumpsit lies in the acceptance or indorsement for the indorser as the acceptor, drawer, or indorser, and it lies as to all these in favor of the assignee by delivery. But one person cannot maintain an action to any person whose name is not on the Bill. Concept is the person of whom he received it, and in this latter case he cannot maintain the action on the Bill, but on the consideration of the transfer - as if the consideration was goods sold and delivered - he may sue for them - No person can maintain an action to a Bill unless their name is upon it, Concept the holder. Suppose then a Bill is drawn upon A. and transferred to B. by indorsement, and B. transfers it to C. by delivery, no action can be maintained to B. on the Bill in favor of C. for B's name is not upon it - C. may however recover on the consideration of the transfer, for goods sold, labor done, &c. - But suppose C. transfers the Bill to D. by bare delivery. D. cannot maintain his action to B. on the Bill, but he may on the consideration. But he can maintain no action to D. - He cannot maintain an action on the Bill for D's name is not upon it, nor can he maintain the action on any consideration, for as between them there never was any consideration and consideration moving from D. to C. - 7 T. R. 64. - S. Ry. - 9 T. R. - 12 Mod 244. 4 B. & C. 521. - 5 B. & C. 516. an action

I showed the holder might in general maintain the action. So also the action may be maintained by the person to the credit of the acceptor, if the acceptance is not, the person is not liable to the drawer, because the acceptance is a joint bill, and

Less Mercatoria.

(Bill of Ex. & Prom. & Note.)

The acceptance makes a promissory note. He is not a party to the bill. Mr. Chittrey has on this subject a rule which is incorrect. He says the Drawer maintains an action to the Drawee for refusing to accept. This is not true, for before the acceptance he is no party to the bill, and he refuses to become one. Even if the Drawee has effects in his hands, he cannot be compelled to accept the bill. But the Drawee can recover them out of his hands and it would be a strange doctrine to make him liable for refusing to accept. It is wrong, absurd. Chittrey, 176. n. 1.

And in general any party, having been compelled to accept the bill may maintain this action to any Party Party. For Party is meant any one whose liability is prior to his own, and on this ground it is not the Drawee can recover of the acceptor. The above rule promises Defendant's name is on the bill, for otherwise he is not a party. 7 J. R. 571. Chittrey, 176. n. 1.

If we accept for the accommodation of the Drawer, by which is meant, that he has none of the Drawee's effects & is obliged to pay the bill, he may recover to the Drawee in this action, but he cannot maintain it on the bill, unless he accepts it as a protest, he may recover the amount out of the Drawee, as for money paid out and expended for his use. If he accepts supra protest, he has a remedy on the bill, for by so accepting, he becomes a party. 126. 196. Chittrey.

This action will lie for a stranger who buys the bill supra protest, to the party for whose honor he paid - and all the prior parties - and when he pays supra protest, he may maintain an action on the bill, he then becomes a party. 126. 196. Chittrey.

Lex Mercatoria. ~ ~

Bill of Ex. & Prom. & V. (Am)

It is a general rule that an action will not lie to one who receives a bill of exchange from the holder after the bill has been cashed. Thus if A. the Payee of a bill cashes it at B., and B. endorses it back again to A. now A. cannot sue B. for it so, B. could receive the same sum, and after 2 laws they would stand in status quo, 4 J. R. 270. ~ ~

But this rule (supra) cannot hold in case of the acceptance or payment, or any of the prior parties to A. in the bill (endorsers) - Indeed in its terms it will not hold as to the Prior Parties. ~ ~

The action will not lie to the party from whom he receives the bill, unless he paid a valuable consideration. The reason is - I am aware the rule has been shaken by a decision in Ans. 1841 - but it is the rule in England. - Ryde 1841. - 7 J. R. 121. - 1841. 286. ~ ~ J. R. & F. 631. - Ding 217. - Mich. 1841. - 9 D. C. 6. 440. contra. ~ ~

If the holder makes the acceptor his Executor and dies, the right of action to all the parties is extinguished. 1841. 543. J. R. 294. - 7 D. C. 541. 12. ~ ~ 5 D. 14. ~ ~ Sim. pl. 191. ~ ~

The reason of the rule supra is that by the holder making the acceptor his Executor, the primary liability is discharged and it must be secondary must be. If the other parties are holders only or are the acceptor's heirs and he is extinguished, then the business the transaction determines the claims of the other parties in the acceptance. The acceptor represents the debtor and executor. He might and duty unite, and he cannot sue himself. Thus by the way is a rule of law. In Equity where the justice of the case requires he might be considered as the trustee for the executor, who may compel him to pay.

The holder may at the same time commence an action to enforce the bill in the Bill. If he obtains satisfaction of one, the

Bill of Exchange

Bill of Ex. & Indorsement

not are discharged. Except for the bills which have occurred in these
cases. They cannot be compelled to pay the debt over again. 1. 1846. - 2. Mod. 85. - 3. Shan 494. - 4. J. R. 691. - Chitty 181. - 2. 173.

If then in action is the Drawee or Indorser the Debt pays
the amount of the Bill and the costs of that particular action to
himself, the Ct. will stay proceedings to him, how many other ac-
tions there may be pending to others. 1. J. R. 691. - 2. Shan 515. - Chit-
ty 195. - (contrary authority in J. R. 749. - and Lanc). -

If however an action is brought to the acceptor and the drawee
is parties also, there will be no stay of proceedings in the action
to the acceptor unless he pays in addition to what is due on the
Bill, the costs of all the other suits; for his liability is primary & he
is the first defaulter. - The others are sued in consequence of his
neglect; he must therefore pay all the costs. -

With respect to the former rule (as to Drawee and Indorser)
I do not see why this last rule should prevail in relation to these
parties. (i.e. in relation to the Drawee and Indorser) when others are
sued whose liability is subsequent to theirs, (i.e. Drawee & Indorser)
As e.g. it is the duty of the Drawee to pay when the acceptor
guilt or neglects - Now I should suppose the Drawee ought to pay
the costs of the Indorser's action, for the Indorser's liability is sub-
sequent to his, it is only after the Drawee neglects to pay that
the Indorser regularly becomes liable. The rule does not however
seem to extend thus far. Same auth. -

But the holder may have several actions to the several
parties who are liable on the Bill and may pursue them all
to judgment, and take out execution to the persons of all, yet
he can have but one sum of money. This is an execution to the

Lex Mercatoria.

Bill of Ex. & Prom. Notes.)

Goods of a person on which the money is to be raised. Pha 579.

And if after he has obtained complete satisfaction out of one, he should happen to be out Execution to another, and pursue him to recover what he had already received from a former party, this other may be relieved by an Audita Invenio.

The Declaration in this return of Audita Invenio may in general be founded either on the instrument itself or on the consideration of it. Thus if it shows a Bill in favor of D, and it is declared that D may sue him on the Bill or on the consideration of it, as if he was previously indebted, or if goods were sold for he may sue for the price debt, or for the goods for which were the consideration of the Bill. In the former case the Bill is counted upon as an instrument - in the latter it is used as Evidence of a Bond contract to pay the debt or for the goods for Bar 372. 2611. - Chap 132. - Ry & 58. 177. 187. - 3 D. 174. - 3 D. 1846. -

In the latter case, i.e. if he sues on the consideration of the transfer, he declares on what are called the "Common Counts" for goods sold and delivered, loan made and performed, money lent and received, money laid out and expended, and on almost all these matters these Common Counts are included, for the purpose of subjecting the Defendant when once in case the Bill fails, or another. If, e.g. he sues to have the Count for money lent and received, he may recover on the one for goods sold and delivered. Having a number of Counts in his Declaration he stands in chance that his Evidence will comport with some one of them and on that he will recover. Sabb 24. - 3 D. 174. -

Ry 177. - Chap 132. - In the form of declaring upon the Bill and on the Common Counts see Bill form 182 to 200.

Lex Mercatoria.

(Bill of Ex. & Prom. & Mch.)

It was formerly usual to allege in the declaration on a bill of exchange the custom of merchants. This is unnecessary. The 5th formerly, when he declared upon a bill used to set out the same merchandise and to guard his particular case. He would state that by the happening of such & such facts (as e.g. the drawing accepting, or endorsing the bill,) the bill became liable to pay. But it is now unnecessary and to refer to the custom of merchants. The Lex Mercatoria is now the law. See frequently so called. L. Ray? 21. 44. 115. 13 44. - Carth. & D. 267. 270. - Stat. 226. Regd 177. 179. 110.

In declaring upon a promissory note however it is usual to say? to aver that the bill became liable by the virtue of the Stat. of John (ante) Now I cannot answer where is the rule? by the law. The Stat. is a public one and there is a matter of counting upon a general Stat. unless it be a special one. The reason why this form was originally adopted, viz. I conclude, out of the abundant caution of Lawyers to show that the right of action came within that Stat. as that Statute gave the right so to me. This is the only way in which I can account for so unnecessary like a proceeding. Chitty 1. 2. 145.

In counting upon the instrument itself it is unnecessary to allege a consideration, for the Law implies one as in case of Woods. 15 L. R. 441. - 2 L. Ray? 708. - Regd 48. - 2. B. 6 445.

And in declaring on a bill of exchange the Law implies. Note it is not necessary to plead the same with Regd. 4. 4. 1. per se a specialty. It is so for a specialty. at the Law presumes a consideration. 15 L. R. 441. 445. - 2. B. 6 445.

Lex. & Mercatoria.

(Bill of Ex. & Prom. Notes.)

Afternoon, March 20th 1813. Lec. 12.

When a Bill or note cannot take effect according to its form the more proper way of deciding upon it, is to state it according to its legal operation. The instance of a Bill payable to a fictitious Payee well illustrates this. For in such case the parties are bound as on a Bill payable to bearer, and it is proper to declare upon it as such a Bill, and then the special facts as to the parties who knew it was fictitious will respect the comment. 3 T.R. 174. 242. 481. 642. 1 H. Bl. 313. 569. - 2 H. 194. 204. - Chitty 44. 58. 13. 2. 186.

And when a note is payable "to the order of A." instead of being payable to "A. or order," the Plff may declare upon it as a note payable to himself, for in legal effect it is the same as a note payable to "A. or order" the "A" expresses to be payable to the order of A. only. 2 Sum. 4. - Carth 403. m.

In actions on Bills of Exchange, it is not indispensable necessary, tho' it is usual, to allege a promise to pay. It is sufficient to describe the Bill or to show how the plff and to it be some parties, and also to show by facts the Defendant's liability. This however is not the usual mode, i.e. to raise a promise, and it is unnecessary. Lord Holt says drawing a Bill of Exchange is equivalent to an express promise to pay. The ground on which it is not necessary to raise the promise is, that the Law itself raises it by the Custom of Merchants. Carth. 509. - Falk. 134. - 1. Anst. 404. - 1. 170. - Chitty 186. 187. 236.

And where a party is not bound to pay by

Lex. Mercatoria.

(Bill of Ex. & Prom. & Notes.)

for variation, i.e. by the act of his agent, it is not necessary that it is known to that he became a party in this way. It is unnecessary, for if the Bill is alleged to have been drawn by A. and it is proved to have been drawn by B. who was his agent, it is a sufficient support of the averment in the declaration that it was drawn by A. according to the well known maxim, *quis per alium facit per se*. 1 W. Bl. 512. - 6 T.R. 659. -

The Indorser may declare to his immediate Indorser as on a Bill of Exchange drawn by the indorser and payable to himself, because in legal effect the endorsing a Bill is equivalent to drawing a new Bill. The rule is laid down in the Books. But I do not doubt but any subsequent indorser may so declare if the indorser's name is in blank, because he may fill it up with his own name and so constitute himself the immediate indorser. The rule as it stands is, that the indorser may declare to the indorser as drawer. Now this would seem to imply that if the bill is delivered over to B. a subsequent indorser that he (B.) could not declare to A. (the first indorser) as drawer. But I conceive he may if A's name is endorsed in blank, for the reason above. 1 T.R. 149. - L. Ray. 212. - 1 Bos. 674. -

This indorser is not the usual form in which an indorser is sued. He is generally sued as Indorser, and the fact is stated as they are. This latter is the safer way, because it leaves all Question. -

In an action to the Drawer or Indorser, the Def. must generally allege presentment for payment, and in the case may be presentment for acceptance. -

Lex. Mercatoria.

(Bill of Ex. & Prom. & Notes.)

I say, in case may be, I mean if presentment for acceptance is necessary, he must allege it. But he must in all cases allege presentment for payment, and also allege a refusal, and that regular notice was given to Defend. unless in such case where the Plff is excused from giving notice. Wong 654. case of Thos. v. B. Apinell. 5 D. 2670. 1 T. R. 712. 1 Vent 415. Chitty, 1 R. 109. 202. &c.

I observed in my morning Lecture that it was usual for the holder to declare not only on the instrument but on the common counts, and the reason of inserting these counts was explained. Now on these common counts the instrument itself may be introduced as ^{evidence} evidence. If e.g. the Plff could not support his action on the Bill he may introduce the bill to support the common counts, for the Defend. may rebut the evidence. The instrument is prima facie evidence only and liable to be rebutted by opposing testimony. Thos. 725. 1 M. & C. 602. 1 exp. R. 426. &c.

In some cases the holder of a Bill ^{declares} on the common counts alone without counting at all upon the instrument. He has a right to do this, if without the Bill he has sufficient evidence to support his action. But this is not usual unless the instrument is defective - as e.g. want of stamp. But where it is defective as a Bill of Exchange it may still conduce to prove or support the common counts, as it is prima facie evidence of an indebtedness. In such case the Plff will allege together on the common counts. 2 T. R. 174. 2 S. & C. 101. &c.

On the common counts, by the way, the Plff may go into proof of the consideration, by Parol and then show

Lex Mercatoria.

Bill of Ex. & Prom. & Recd.

his right to move. He is not obliged to give the consideration
in the Bill or note, for these do not merge the indebtedness, as a
bond does, & it is the Debtor's duty to produce the Bill, or if he does
as he is not bound by it, but may introduce other Evidence. D.
J. H. 174. - J. H. 241. - 1 Cr. R. 245. - 1 Cr. R. 245. - 1 Cr. R. 245.
137. - 1 Cr. R. 245. - 1 Cr. R. 245. - 1 Cr. R. 245.

Now when one takes a Bond from another he cannot sue
on this case. The Law will not permit him to sue by the
Bond on sue upon the consideration of it. It is merged.
But a Bill tho' in effect a specialty does not merge the debt
and sue on it.

I just observed the instrument may be given in evidence
in support of the money (common) counts. There are some
distinctions to be observed as to cases where the bill may and
where it may not be used in evidence, which I will explain
hereafter.

In an action by the Payee or the Assignee of a Bill
or maker of a Note the instrument itself may be introduced
as prima facie Evidence of money lent. If then the
Debtor brings his action to recover on the maker for money
lent, he may without taking any notice of the Bill or
note in his declaration, produce it in Evidence, and as prima
facie Evidence that the money was lent. It is presumed as
soon the bill is produced on trial that the Payee paid the
amount of the same, and therefore, that the bill is, ^{it is} prima
facie Evidence of money lent to the maker of it. 1 Cr. R. 245.
1 Cr. R. 245. - 1 Cr. R. 245. - 1 Cr. R. 245. - 1 Cr. R. 245.

Lox + Mercatoria

Bills of Ex. & Prom. (2d.)

The rule is the same where the action is brought by the holder as by immediate endorser. The endorsement may be introduced as prima facie evidence to support a Count for money lent for the endorsement furnishes a presumption that the money received the amount of the endorsement, and therefore that he lent it for so much back again.

1st Sur 273. Chetty, 196.

And it is said that the Bill or note is also prima facie evidence of money paid by the holder to the use of the Treasurer of the Bill or maker of the Note. Trailly 92. Chetty 191. — I believe this point has never been judicially decided, but I see nothing in it unreasonable. The holder has paid the endorser to value the Bill, and the endorser has paid the former party, and the former party paid the Treasurer, and the Treasurer has used the Bill about in the World. There is no denying the presumption, it may be shown that the holder has paid the amount of the Bill for the use of the Treasurer, altho he himself did not pay it. The said C. and C. paid it, and the Treasurer paid it to the Treasurer. The acceptance is to pay the Treasurer having had the benefit of so much money, it may be considered as having been paid to his use by the Holder. It is on this ground, I suppose the rule is given. It may however be considered as questionable by some on the ground that there is no privity between the Holder and the Treasurer.

It has been said that a Bill accepted is evidence of money paid by the holder to the use of the acceptor. To the acceptance is the holder's money being an action for money lent out and expended for the use of the acceptor. This doctrine is carried by Lord C. D. S. on the ground that there is no privity between the holder and acceptor. 2d. Sur 602. Chetty 191.

Sec. - Mercantile

Bill of Ex. & Prom. & Notes.)

The above rule is then to be considered as Inconclusive. -
 Again - The Bill is said to be prima facie evidence of money paid
 and received by the acceptor to the use of the holder. I am not aware
 that this is settled. It is true there is no immediate proof, as
 shown from the 'that objection is not so strong as this as in the
 last case. The acceptor is presumed to have effects of the Drawer. -
 He is then presumed to have that fund on which the Bill was
 drawn, and the holder is presumed to have paid the value of
 the Bill on the credit of that fund. [not exclusively on the
 credit of the fund, for there must be a personal credit likewise.
 That consideration is immaterial here however. T.D.) He is presumed
 to have those effects for the purpose of paying the amount
 of the Bill over to the holder. And in this point of view, it is
 not inconceivably that a rule like the above should have been in-
 troduced. If it is correct, it follows that the drawer may be
 liable in debt or as promisor to the acceptor for money paid and re-
 ceived, and that the Bill or Note will prima facie prove it. -
H. 56. 239. - Parley 95. - Blatty 141. -

If the Drawer not having effects of the Drawer, pays the
 Bill, the Bill in his hands is evidence of money paid, laid out,
 and expended for the use of the Drawer. Of course the receipt
 in many cases in Indebtedness as promisor, to the Drawer for mo-
 ney paid, &c. to his use, and the Bill is evidence of this fact.
 You observe it is an ingredient of the rule that the Drawer has
 no effects, and this fact we must prove, and having proved,
 it is then evidence at law. If I request for to pay mo-
 ney for money paid, and for the 'not indebted, &c. &c.
 with the request, and it is evidence that money is paid to the

Law Mercantile.

Bill of Ex. & Prom. Note

In the use of it, and this is the case in mercantile law. 15 R. 269. - 1 N. 510. - 1 Ex. 232. -

A Bill or Note is the prima facie evidence of money lent and received by the Drawer or Maker to the use of the holder. No question arises. The proof by which the note is proved to be well founded is simple. The Drawer is presumed to have received the amount of the Bill; the Payee transfers it to him thus for a valuable consideration, and the Drawer refuses to accept or pay. By the support in them the Drawer has received the value, and is liable to the holder and has come under an obligation to pay him the same value in case the Bill is dishonored. The money that he has received may be considered as received for the use of the owner of the holder of the Bill and as such he may convert it out of him. 1 H. 273. - 1 Ex. 241. - 1 N. 510. - 1 Ex. 232. -

It has also been determined that an acceptance is prima facie evidence of an account stated between the acceptor and holder, and that a balance to that amount, (i.e. to the amount of the acceptance) appears to be due from the acceptor to the holder; for the acceptor is presumed to have seen how much was due to the Drawer, and by the acceptance he has agreed to pay the balance due to the holder. The holder may then declare in intrinsic competent as an account stated, and the acceptance is evidence of it. 1 H. 241. 232. - 1 Ex. 241. 232. -

With regard to the Evidence by which
an action on a Bill or Note is to be
Supported.

Lex. & Mercatoria.

Bill of Ex. & Prom. (cont.)

The Evidence in these, as in all other cases, is governed by the pleading. That which is necessary for the holder to allege in his declaration is necessary for him to prove in Evidence. There is a general plea puts the whole declaration in issue he must prove the whole. He must state all that is necessary to his right of action, and prove it. But he is not bound to prove more, than what is necessary to his right of action, for he is bound to prove no more than he is bound to state. What is necessary for him to state you must collect from the pleading rules. — — —

It may be observed with some more particularity that the holder who sues on the Bill, must prove the Bill was made. That the Bill is such an one as is described on in its legal operation is the same. He must prove the Defend, became a party to it - for as it is necessary for him to state the Bill became a party, so he must prove it. Comp. 667. — D. J. H. 178. 2nd D. 643. — 4th H. 471. 611. 1st D. 8. Sub. 7. — — —

When the holder sues the acceptor, he must prove the Defend accepted the Bill, and if the acceptance was by agent, that the Agent was lawfully authorized to make it. 1st D. 11. 14. 15. — Chitby 24. 209. 207. — — —

If the acceptance was conditional, the Bill is in action by the acceptor must prove the event on which it was to be paid it to have taken place, or the condition performed. 1st D. 212. Comp. 671. — — —

In an action on the acceptance, proof of his own Signature that he has accepted the Bill is sufficient. — — —

Lex Mercatoria.

Bills of Ex. & Prom. (Notes.)

If an action is brought by an Endorsee to the acceptor or to the Drawer the Payee must prove the hand writing of the first Endorser, for this will show no title in himself. Suppose he brings his action to the acceptor, and trans his (the acc^t) hand writing, yet this proves no title in himself, i.e. that his Endorser was parted with his title. He must then prove the Bill to have been endorsed, and he must prove it to have been endorsed by the Payee who is the first Endorser.

Reed 21.225. - 1 Rep. 66. 140. - 1 L. R. 684. - 2 D. 620. 622. - 3 L. R. 175. -

March 23. 1813. Lecture 14th.

I observe that in an action to be brought by the Endorsee to the Drawer or acceptor, the hand writing of the first Endorser must be proved; for if the Payee has never endorsed the holder has no title to the Bill. Further, where there have been 2 endorsements the first being in full, (i.e. not in blank) the holder must prove the second endorsement (i.e. the hand writing of the second endorser) as well as the first in any action either to that Endorser or the maker, or the acceptor, or any former endorser. (1 L. R. 684. 1 L. R. 175. -)

The reason of this is manifest if you trace the progress of the Bill. It is made payable to A. or order. A endorses it in full "pay the contents to B". B endorses it to C. - If A's endorsement not being in blank C cannot fill it up by inserting his own name. - He must then prove the endorsement of B, for no person can get a title but through B. - It endorses must be proved to show that B. had a right to endorse, and to prove

Lex Mercatoria.

Bill of Ex. & Prom. ^{to Draw}

endorsement must be proved to show a title in the holder. And the same rule holds as to all the successive endorsements when they are in full. As in the example where C. endorses to D. in full, and D. to E. next. must not only prove that C. endorsed it, but that D. C. and D. respectively, did so likewise. He does not deduce a title in himself - but where the first endorsement is in blank he need not prove the hand writing of the intermediate endorser, for he can fill up this first (blank) endorsement with his own name. The hand writing is not proved to show that the Bill was made or accepted - that is a different thing. But it is proved for the purpose of showing a title in the Bill in the present holder. If on the other hand (I repeat) the first endorsement is in blank, it is not necessary to prove any subsequent endorsement, provided the action was in him, as the drawer, or the acceptor, because I say he can fill up the endorsement with his own name, and he is thus relieved from the necessity of proving all the intermediate endorsements. In such case the holder endorses the intermediate endorsements (whether in full or in blank) and fills up the first with his own name, and then by proving the first hand writing he shows a title in himself. If however he would claim to any of the intermediate endorser, he must prove his endorsement and that of all previous to him. Lang. 617. on 6 & 7. Holt.

296. - Poole. 10. 720. - 1 Exch. 11. 140. -

If a bill is payable to a fictitious payee or names, it is not necessary to prove any endorsement. The rule that enters the night and duties on such a bill will point out what is necessary to be proved. In the nature of the thing there cannot be an endorsement. It will operate as a bill payable.

Loss Mercatoria.

Dith of Ex. & Promt. Acton

So, it is all the Parties who know the Payee to be fictitious - it is impossible to prove an endorsement, because there is no person in life who can endorse it. Such a Bill should be declared upon as a Bill payable to bearer. This is the most dangerous hole and trap in private trade. The Dyff. to be sure may state the special facts, that it was payable to a fictitious Payee, and that it endorsed to him (the Dyff.) and then saying the Bill to be payable to a fictitious person - Ex. & Promt. Act. 1774. 182. & 81. - 171. 56. 572. 580. 569. - 2 Pl. 124. 288. - Heyd 2. 81. -

When the Drawer or Indorser is sued, Dyff. must prove that he used due diligence to obtain the money from the acceptor, or Drawee. This the law requires of him, and if he was not due about the law requires of him, he has no right to recover of the other parties. They are to pay if the holder cannot obtain it of the acceptor. - this liability is reasonable & justified - this implied contract is not broken if the holder has not used due diligence to obtain the money of the acceptor or Drawee. Com. Pl. 579. - 3 Bos. 2670. - 1 Port 40. - 3 Pl. 112.

Now this due diligence on the part of the holder, as I have asked above, consists principally in three things; presentment for acceptance in some cases, presentment for payment generally, and in either case, (i.e. of non-acceptance or non-payment) notice that the bill has been dishonoured, must be given to the party to whom he claims within the time prescribed by law. It follows necessarily that when an action is brought on the Drawee or Indorser the holder must in some cases (as where a Bill is payable such a time after sight) have presentment for acceptance. When this is necessary to be proved,

Lex Mercatoria.

Bills of Ex. & Prom. & Notes

It is well known by receiving, to the former, also I gave on this point.
14th Ed. 117. - 1st Ed. 562.

On the same principle, where an action is brought to the
 Drovers or Indorses the holder must first presentment to the
 Drovers for payment, and this is regularly to be done whether the
 Drovers accepted the Bill or not. To this is a necessary part of the
 holder's duty, so he must prove it to have been performed. 1st Ed.
561. - 2d Ed. 669. - 3d Ed. 127. - 4th Ed. 1099. - 5th Ed. 470.

And in both cases, where presentment for acceptance is
 necessary, or where it is unnecessary, and presentment for pay-
 ment was necessary, and the Bill has been dishonored, the hol-
 der must give notice to the Drovers or Indorses (also he does the
 same) for it is a part of his duty to give notice - and this notice
 must be given according to law - it is generally to be given in a
 reasonable time, and what is a reasonable time, is now well set-
 tled. 5th Ed. 2670. - 1st Ed. 712. - 1st Ed. 49.

And in case of Foreign Bills in an action to the Drovers
 or Indorses, the Plff. in proving notice to the B. & P. must pro-
 duce protest for non-payment, and as the case may be of non-
 acceptance; for in Foreign Bills, protest is a necessary part of the
 notice. 1st Ed. 993. - 6th Ed. 10. - 2d Ed. 712. - 5th Ed. 32.
7. - 1st Ed. 1st.

But when it is said a protest is to be proved, it
 is not to be understood, that anything more is necessary
 is general than to produce the protest - for it proves itself -
 If it is forged, the B. & P. may prove it to be so, but this is a
 special case, the production of it is sufficient. 1st Ed. 210. - 12.
1st Ed. 210. - 2d Ed. 297. - 3d Ed. 104.

Sex Marcatonia

Bill of Ex. H. from N. H. 1840

remained. I of the 10, 11, &c. I of these were also seen. I
 have been called upon, since his death, to many, none of the
 former families, I. very? 1 of 2, —

The rule is the same as the the Univer. - can be so, the
 exception, he must prove that the Bill was returned to him. &
 that he paid it. If he has paid it voluntarily, he has paid it
 with the intent of the Act. I did not.

If the acceptance of the Debt was the answer, for the money he has paid, he must have in only the answer and writing and then he paid the money himself, or something equivalent, as if he were sued and taken in execution; but also that he had no effects of the answer in his hands because the presumption arising from a simple acceptance is that he was indebted to the answer, or had effects of his - and the onus probandi that he was not indebted, non had no effects of the answer his upon him. 3 libel 400. Thyng v. The City of London. 207. ~ ~ ~

On the other hand, if the Drawer having paid the Bill
was the acceptor, he must prove the acceptance, a demand on the
acceptor for payment, and his refusal to pay - and also that
the Bill was returned to him, and that he has paid it. 10 -

Med. 26. 27. - 4 Quills. 18 B. - - - -

But in an action brought by the Drawer to the Acceptor the former need not prove that he had effect in the Drawee's hands, for the law presumes that he had not his own fault. The acceptance furnishes a presumption that the acceptor had effect. This rule supposes the Bill to have been accepted wholly - for if the Drawer accepts in part, the presumption

Bill of Exchange & Promissory Note.

(Bill of Exchange & Promissory Note.)

When a Bill is used on a bill, the money into bank, he admits his own signature by that act. He admits himself liable to the amount of money he issues into bank. This interesting account is a Journal & something more. — 3 Dec 26 31. — 2 J. Dec 27 31. — 1 Sep 31. 247. — 1 J. Dec 207. — 2 J. Dec 247. —

When the holder uses on a Bill transferable by mere delivery, the production of the Bill alone, is in general sufficient evidence of his title. There is however an Exception to this rule where the holder took the Bill under suspicious circumstances, or where the Bill was lost. In such cases where the law is proved, the holder may be compelled to show that he or some intermediate holder received it bona fide & for a valuable consideration. Chitty 209. n. —

Thus when a Bill is made payable to bearer, it is not incumbent on the holder to prove, that the Payee endorsed it, or that any other person endorsed it, for no endorsement is necessary. But where a Bill is transferable by endorsement only, as where it is made payable to order, the holder must prove it. But where it is payable to bearer, he need not even prove of whom he received it. His possession is in general sufficient evidence of his own right to the Bill. It is prima facie evidence. Chitty 209

If an Acceptor having paid the Bill refuses to pay, the Drawer for the money, the acceptance supra protest is prima facie evidence that he had no effect of the Drawer in his hands. For this acceptance a payment amount excludes the presumption that he had effect in his hands. Chitty 209. 210. n. —

In an action on a Foreign Bill to the Drawer or Endorser, the law is different. Evidence of payment & refusal is not sufficient of proving payment or refusal. The holder must show that the bill is known in the mercantile world to be a bill of exchange.

Less. Mercatoria.

Bills of exchange 7 From 7 Note,

in 1841, and full measure in the summer of 1842 in the district of Long's River.

18. 20. 1900. 2. 11. 1900. 2. 11. 1900. 2. 11. 1900.

that independently of the observation that this forest contains nearly
as much H. than full Tennessee is to be given to it. The only reason that the

10. A Jewish citizen in his time, from the Bible, during the time of the

4. The description in the above reference for the station is to be kept in the form

They entered the St. Lawrence on the 1st of the August and had dinner in it.

The water could be brought to power, with less, at that great distance.

and, as a consequence, the time hypothesis is broken, which is a serious problem.

...and brown, in combination with being yellowish

and a common place. How - or rather why - this is so, I am not sure.

1. Production of the product and its storage.

the receipt of the money. The D. & C. Co. The D. & C. Co. The D. & C. Co.

The following notes, illustrations, and drawings were examined. -

As a result of the investigation, the production of the office was found to be

... .. S. 27. 27.

There is no other information that J. D. M. has received.

Let μ be a measure on \mathbb{R}^n and let f be a function on \mathbb{R}^n such that $f \in L^1(\mu)$. Then

method of this note. This method cannot be left in the hands of the

the ground, the latter is small, and if, however it is not ground in it. If

add to it, instead of, the $\frac{1}{2}$ being put in brackets by a minus sign, it is

on otherwise & that it was left out the "Intelligencer" in it. I was surprised.

Sept. 2 N. 26. 1874. - P. 10. 1874. - 19. 1874. - P. 10. 1874. - 19. 1874.

[illegible]

Spumipol. - found a few months since in a well from 1000

The action of belt will in some cases be

the party be on a bill of exchange or promissory

Notes of the case.

There is a very much difficulty in making
a statement of the facts of the case. The general
facts of the case are - That there have been many attempts
to get the case decided in favor of the Society of
the Friends of the Cause, but all have failed. The Society of
the Friends of the Cause have been very much
afflicted, and have been very much distressed.

The first of the case is of a Chief of the
Society of the Friends of the Cause, and it is
said that the report of the Chief of the
Society of the Friends of the Cause is that it is
very much distressed, and that it is very much
afflicted, and that it is very much distressed.

The second of the case is of a Chief of the
Society of the Friends of the Cause, and it is
said that the report of the Chief of the
Society of the Friends of the Cause is that it is
very much distressed, and that it is very much
afflicted, and that it is very much distressed.

Again, it has been said that a Chief of the
Society of the Friends of the Cause is that it is
very much distressed, and that it is very much
afflicted, and that it is very much distressed.

The third of the case is of a Chief of the
Society of the Friends of the Cause, and it is
said that the report of the Chief of the
Society of the Friends of the Cause is that it is
very much distressed, and that it is very much
afflicted, and that it is very much distressed.

It is said that the report of a Chief of the
Society of the Friends of the Cause is that it is
very much distressed, and that it is very much
afflicted, and that it is very much distressed.

Powers of Chancery.

2 Bl. 378

2 Bl. 245 4.
377.

5 Bl. 420

2 Bl. 239

3 Bl. 491.

1 Bl. 57.

Long. 204.

of jurisdiction. There are many rules of the C.P. which are extremely rigorous. Thus before the Stat 30 & 31, & there if a debtor conveyed away his real estate, his land creditors never could have a remedy. In this case neither Law nor Eq^y could give relief. And even now a man's real estate devised or inherited is never liable for his private contract debts. But Eq^y can not interpose; The rule of descent that a lineal ancestor shall never succeed to an estate is a positive & rigid rule of Law not Eq^y cannot prevent this rule from operating. So that the half blood should be excluded from inheriting as a rigorous rule. These show that many rigorous rules of Law are now established which Eq^y cannot do away; and yet the definition is that it is the duty of Eq^y to do away these very rules. In several the rules of C.P. are too hard & rigorous. In various seasons have even some been altered. It is true then generally speaking that a Ct of Eq^y has nothing to do with establishing the rigor of the Com. Law.

2^d It is said that a Ct of Eq^y decides according to the spirit & not the letter of the rule. But a Ct of C.P. is bound to decide according to the spirit of a law; & it is a standing cardinal rule in the construction of all laws, that the spirit of it shall be the guide.

The rule of construction on contracts is both C.P. and the same rule as to the construction of contracts.

Law & Equity.

Mistakes are relieved in Law as mistakes in
acc. contingencies which render performance of a condi-
tion impossible. But all mistakes cannot be reliev-
ed as either in Law or Equity. As if a decree is ill
executed by mistake the Ch. will give no relief at all. So
when a contingent remainder is destroyed obtaining
some matter of accident the Ch. will give no relief.
Trusts. There are generally cognizable in Equity, &
some of them only. But a bit of Law has significance
of trusts in many cases. As in common case of bank-
rupts, where the trustee is a strict trustee. There is no
case in which a bit of Ch. has exclusive jurisdiction
of a trustee because it is a trust. ~~Where~~ In case of
money had & received, the receiver is in strict eq. of
Law & Equity, yet there is no need of alleging the
Equity. A proper technical trust is regulated and is
not. 25. But this reason that the title in Law is not con-
summate. It is only binding in conscience. Ch. will
sometimes aid a little defect in Law.

Mistakes in written instruments are generally not
aided in Ch. The reason is not because there is any in-
trinsic quality in a mistake which renders it pecu-
liarly cognizable in a bit of Ch, but because in this
case a bit of Law could not give complete relief.
The reason of it's made of necessity. Suppose a
bond executed for \$200, when the parties mean only
\$100. and after the obligee is discharged enough
to insist upon the \$200. Now in Law a contract
cannot be apprehended. The same is after the action
in Law.

Power of Attorney.

the party or not, if it is the first, we are given the a ^{1st} part of the bond, unless that have been paid. If an exception might be pleaded, the obligee should suffer for he has a right to \$, and a jury then cannot apportion damages. But the Chancellor can make a decree that the obligor shall pay \$, and upon doing that that the obligor shall deliver up the bond.

Lastly, it is said that the law is not governed by precedent or positive rules. A more incorrect proposition could not be said. There are some cases where the law is said to be altered by them, they must be out of the law. A distinction is made between a right to demand money. If the demand is proper of a trust estate, ^{Don't} it is settled in law that the wife shall not be ^{Don't} ^{2d} ¹¹ ²¹ ³⁴ ⁴⁰ ^{1st} ⁶ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸ ²⁹ ³⁰ ³¹ ³² ³³ ³⁴ ³⁵ ³⁶ ³⁷ ³⁸ ³⁹ ⁴⁰ ⁴¹ ⁴² ⁴³ ⁴⁴ ⁴⁵ ⁴⁶ ⁴⁷ ⁴⁸ ⁴⁹ ⁵⁰ ⁵¹ ⁵² ⁵³ ⁵⁴ ⁵⁵ ⁵⁶ ⁵⁷ ⁵⁸ ⁵⁹ ⁶⁰ ⁶¹ ⁶² ⁶³ ⁶⁴ ⁶⁵ ⁶⁶ ⁶⁷ ⁶⁸ ⁶⁹ ⁷⁰ ⁷¹ ⁷² ⁷³ ⁷⁴ ⁷⁵ ⁷⁶ ⁷⁷ ⁷⁸ ⁷⁹ ⁸⁰ ⁸¹ ⁸² ⁸³ ⁸⁴ ⁸⁵ ⁸⁶ ⁸⁷ ⁸⁸ ⁸⁹ ⁹⁰ ⁹¹ ⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ ⁶⁰⁶ ⁶⁰⁷ ⁶⁰⁸ ⁶⁰⁹ ⁶¹⁰ ⁶¹¹ ⁶¹² ⁶¹³ ⁶¹⁴ ⁶¹⁵ ⁶¹⁶ ⁶¹⁷ ⁶¹⁸ ⁶¹⁹ ⁶²⁰ ⁶²¹ ⁶²² ⁶²³ ⁶²⁴ ⁶²⁵ ⁶²⁶ ⁶²⁷ ⁶²⁸ ⁶²⁹ ⁶³⁰ ⁶³¹ ⁶³² ⁶³³ ⁶³⁴ ⁶³⁵ ⁶³⁶ ⁶³⁷ ⁶³⁸ ⁶³⁹ ⁶⁴⁰ ⁶⁴¹ ⁶⁴² ⁶⁴³ ⁶⁴⁴ ⁶⁴⁵ ⁶⁴⁶ ⁶⁴⁷ ⁶⁴⁸ ⁶⁴⁹ ⁶⁵⁰ ⁶⁵¹ ⁶⁵² ⁶⁵³ ⁶⁵⁴ ⁶⁵⁵ ⁶⁵⁶ ⁶⁵⁷ ⁶⁵⁸ ⁶⁵⁹ ⁶⁶⁰ ⁶⁶¹ ⁶⁶² ⁶⁶³ ⁶⁶⁴ ⁶⁶⁵ ⁶⁶⁶ ⁶⁶⁷ ⁶⁶⁸ ⁶⁶⁹ ⁶⁷⁰ ⁶⁷¹ ⁶⁷² ⁶⁷³ ⁶⁷⁴ ⁶⁷⁵ ⁶⁷⁶ ⁶⁷⁷ ⁶⁷⁸ ⁶⁷⁹ ⁶⁸⁰ ⁶⁸¹ ⁶⁸² ⁶⁸³ ⁶⁸⁴ ⁶⁸⁵ ⁶⁸⁶ ⁶⁸⁷ ⁶⁸⁸ ⁶⁸⁹ ⁶⁹⁰ ⁶⁹¹ ⁶⁹² ⁶⁹³ ⁶⁹⁴ ⁶⁹⁵ ⁶⁹⁶ ⁶⁹⁷ ⁶⁹⁸ ⁶⁹⁹ ⁷⁰⁰ ⁷⁰¹ ⁷⁰² ⁷⁰³ ⁷⁰⁴ ⁷⁰⁵ ⁷⁰⁶ ⁷⁰⁷ ⁷⁰⁸ ⁷⁰⁹ ⁷¹⁰ ⁷¹¹ ⁷¹² ⁷¹³ ⁷¹⁴ ⁷¹⁵ ⁷¹⁶ ⁷¹⁷ ⁷¹⁸ ⁷¹⁹ ⁷²⁰ ⁷²¹ ⁷²² ⁷²³ ⁷²⁴ ⁷²⁵ ⁷²⁶ ⁷²⁷ ⁷²⁸ ⁷²⁹ ⁷³⁰ ⁷³¹ ⁷³² ⁷³³ ⁷³⁴ ⁷³⁵ ⁷³⁶ ⁷³⁷ ⁷³⁸ ⁷³⁹ ⁷⁴⁰ ⁷⁴¹ ⁷⁴² ⁷⁴³ ⁷⁴⁴ ⁷⁴⁵ ⁷⁴⁶ ⁷⁴⁷ ⁷⁴⁸ ⁷⁴⁹ ⁷⁵⁰ ⁷⁵¹ ⁷⁵² ⁷⁵³ ⁷⁵⁴ ⁷⁵⁵ ⁷⁵⁶ ⁷⁵⁷ ⁷⁵⁸ ⁷⁵⁹ ⁷⁶⁰ ⁷⁶¹ ⁷⁶² ⁷⁶³ ⁷⁶⁴ ⁷⁶⁵ ⁷⁶⁶ ⁷⁶⁷ ⁷⁶⁸ ⁷⁶⁹ ⁷⁷⁰ ⁷⁷¹ ⁷⁷² ⁷⁷³ ⁷⁷⁴ ⁷⁷⁵ ⁷⁷⁶ ⁷⁷⁷ ⁷⁷⁸ ⁷⁷⁹ ⁷⁸⁰ ⁷⁸¹ ⁷⁸² ⁷⁸³ ⁷⁸⁴ ⁷⁸⁵ ⁷⁸⁶ ⁷⁸⁷ ⁷⁸⁸ ⁷⁸⁹ ⁷⁹⁰ ⁷⁹¹ ⁷⁹² ⁷⁹³ ⁷⁹⁴ ⁷⁹⁵ ⁷⁹⁶ ⁷⁹⁷ ⁷⁹⁸ ⁷⁹⁹ ⁸⁰⁰ ⁸⁰¹ ⁸⁰² ⁸⁰³ ⁸⁰⁴ ⁸⁰⁵ ⁸⁰⁶ ⁸⁰⁷ ⁸⁰⁸ ⁸⁰⁹ ⁸¹⁰ ⁸¹¹ ⁸¹² ⁸¹³ ⁸¹⁴ ⁸¹⁵ ⁸¹⁶ ⁸¹⁷ ⁸¹⁸ ⁸¹⁹ ⁸²⁰ ⁸²¹ ⁸²² ⁸²³ ⁸²⁴ ⁸²⁵ ⁸²⁶ ⁸²⁷ ⁸²⁸ ⁸²⁹ ⁸³⁰ ⁸³¹ ⁸³² ⁸³³ ⁸³⁴ ⁸³⁵ ⁸³⁶ ⁸³⁷ ⁸³⁸ ⁸³⁹ ⁸⁴⁰ ⁸⁴¹ ⁸⁴² ⁸⁴³ ⁸⁴⁴ ⁸⁴⁵ ⁸⁴⁶ ⁸⁴⁷ ⁸⁴⁸ ⁸⁴⁹ ⁸⁵⁰ ⁸⁵¹ ⁸⁵² ⁸⁵³ ⁸⁵⁴ ⁸⁵⁵ ⁸⁵⁶ ⁸⁵⁷ ⁸⁵⁸ ⁸⁵⁹ ⁸⁶⁰ ⁸⁶¹ ⁸⁶² ⁸⁶³ ⁸⁶⁴ ⁸⁶⁵ ⁸⁶⁶ ⁸⁶⁷ ⁸⁶⁸ ⁸⁶⁹ ⁸⁷⁰ ⁸⁷¹ ⁸⁷² ⁸⁷³ ⁸⁷⁴ ⁸⁷⁵ ⁸⁷⁶ ⁸⁷⁷ ⁸⁷⁸ ⁸⁷⁹ ⁸⁸⁰ ⁸⁸¹ ⁸⁸² ⁸⁸³ ⁸⁸⁴ ⁸⁸⁵ ⁸⁸⁶ ⁸⁸⁷ ⁸⁸⁸ ⁸⁸⁹ ⁸⁹⁰ ⁸⁹¹ ⁸⁹² ⁸⁹³ ⁸⁹⁴ ⁸⁹⁵ ⁸⁹⁶ ⁸⁹⁷ ⁸⁹⁸ ⁸⁹⁹ ⁹⁰⁰ ⁹⁰¹ ⁹⁰² ⁹⁰³ ⁹⁰⁴ ⁹⁰⁵ ⁹⁰⁶ ⁹⁰⁷ ⁹⁰⁸ ⁹⁰⁹ ⁹¹⁰ ⁹¹¹ ⁹¹² ⁹¹³ ⁹¹⁴ ⁹¹⁵ ⁹¹⁶ ⁹¹⁷ ⁹¹⁸ ⁹¹⁹ ⁹²⁰ ⁹²¹ ⁹²² ⁹²³ ⁹²⁴ ⁹²⁵ ⁹²⁶ ⁹²⁷ ⁹²⁸ ⁹²⁹ ⁹³⁰ ⁹³¹ ⁹³² ⁹³³ ⁹³⁴ ⁹³⁵ ⁹³⁶ ⁹³⁷ ⁹³⁸ ⁹³⁹ ⁹⁴⁰ ⁹⁴¹ ⁹⁴² ⁹⁴³ ⁹⁴⁴ ⁹⁴⁵ ⁹⁴⁶ ⁹⁴⁷ ⁹⁴⁸ ⁹⁴⁹ ⁹⁵⁰ ⁹⁵¹ ⁹⁵² ⁹⁵³ ⁹⁵⁴ ⁹⁵⁵ ⁹⁵⁶ ⁹⁵⁷ ⁹⁵⁸ ⁹⁵⁹ ⁹⁶⁰ ⁹⁶¹ ⁹⁶² ⁹⁶³ ⁹⁶⁴ ⁹⁶⁵ ⁹⁶⁶ ⁹⁶⁷ ⁹⁶⁸ ⁹⁶⁹ ⁹⁷⁰ ⁹⁷¹ ⁹⁷² ⁹⁷³ ⁹⁷⁴ ⁹⁷⁵ ⁹⁷⁶ ⁹⁷⁷ ⁹⁷⁸ ⁹⁷⁹ ⁹⁸⁰ ⁹⁸¹ ⁹⁸² ⁹⁸³ ⁹⁸⁴ ⁹⁸⁵ ⁹⁸⁶ ⁹⁸⁷ ⁹⁸⁸ ⁹⁸⁹ ⁹⁹⁰ ⁹⁹¹ ⁹⁹² ⁹⁹³ ⁹⁹⁴ ⁹⁹⁵ ⁹⁹⁶ ⁹⁹⁷ ⁹⁹⁸ ⁹⁹⁹ ¹⁰⁰⁰ ¹⁰⁰¹ ¹⁰⁰² ¹⁰⁰³ ¹⁰⁰⁴ ¹⁰⁰⁵ ¹⁰⁰⁶ ¹⁰⁰⁷ ¹⁰⁰⁸ ¹⁰⁰⁹ ¹⁰¹⁰ ¹⁰¹¹ ¹⁰¹² ¹⁰¹³ ¹⁰¹⁴ ¹⁰¹⁵ ¹⁰¹⁶ ¹⁰¹⁷ ¹⁰¹⁸ ¹⁰¹⁹ ¹⁰²⁰ ¹⁰²¹ ¹⁰²² ¹⁰²³ ¹⁰²⁴ ¹⁰²⁵ ¹⁰²⁶ ¹⁰²⁷ ¹⁰²⁸ ¹⁰²⁹ ¹⁰³⁰ ¹⁰³¹ ¹⁰³² ¹⁰³³ ¹⁰³⁴ ¹⁰³⁵ ¹⁰³⁶ ¹⁰³⁷ ¹⁰³⁸ ¹⁰³⁹ ¹⁰⁴⁰ ¹⁰⁴¹ ¹⁰⁴² ¹⁰⁴³ ¹⁰⁴⁴ ¹⁰⁴⁵ ¹⁰⁴⁶ ¹⁰⁴⁷ ¹⁰⁴⁸ ¹⁰⁴⁹ ¹⁰⁵⁰ ¹⁰⁵¹ ¹⁰⁵² ¹⁰⁵³ ¹⁰⁵⁴ ¹⁰⁵⁵ ¹⁰⁵⁶ ¹⁰⁵⁷ ¹⁰⁵⁸ ¹⁰⁵⁹ ¹⁰⁶⁰ ¹⁰⁶¹ ¹⁰⁶² ¹⁰⁶³ ¹⁰⁶⁴ ¹⁰⁶⁵ ¹⁰⁶⁶ ¹⁰⁶⁷ ¹⁰⁶⁸ ¹⁰⁶⁹ ¹⁰⁷⁰ ¹⁰⁷¹ ¹⁰⁷² ¹⁰⁷³ ¹⁰⁷⁴ ¹⁰⁷⁵ ¹⁰⁷⁶ ¹⁰⁷⁷ ¹⁰⁷⁸ ¹⁰⁷⁹ ¹⁰⁸⁰ ¹⁰⁸¹ ¹⁰⁸² ¹⁰⁸³ ¹⁰⁸⁴ ¹⁰⁸⁵ ¹⁰⁸⁶ ¹⁰⁸⁷ ¹⁰⁸⁸ ¹⁰⁸⁹ ¹⁰⁹⁰ ¹⁰⁹¹ ¹⁰⁹² ¹⁰⁹³ ¹⁰⁹⁴ ¹⁰⁹⁵ ¹⁰⁹⁶ ¹⁰⁹⁷ ¹⁰⁹⁸ ¹⁰⁹⁹ ¹¹⁰⁰ ¹¹⁰¹ ¹¹⁰² ¹¹⁰³ ¹¹⁰⁴ ¹¹⁰⁵ ¹¹⁰⁶ ¹¹⁰⁷ ¹¹⁰⁸ ¹¹⁰⁹ ¹¹¹⁰ ¹¹¹¹ ¹¹¹² ¹¹¹³ ¹¹¹⁴ ¹¹¹⁵ ¹¹¹⁶ ¹¹¹⁷ ¹¹¹⁸ ¹¹¹⁹ ¹¹²⁰ ¹¹²¹ ¹¹²² ¹¹²³ ¹¹²⁴ ¹¹²⁵ ¹¹²⁶ ¹¹²⁷ ¹¹²⁸ ¹¹²⁹ ¹¹³⁰ ¹¹³¹ ¹¹³² ¹¹³³ ¹¹³⁴ ¹¹³⁵ ¹¹³⁶ ¹¹³⁷ ¹¹³⁸ ¹¹³⁹ ¹¹⁴⁰ ¹¹⁴¹ ¹¹⁴² ¹¹⁴³ ¹¹⁴⁴ ¹¹⁴⁵ ¹¹⁴⁶ ¹¹⁴⁷ ¹¹⁴⁸ ¹¹⁴⁹ ¹¹⁵⁰ ¹¹⁵¹ ¹¹⁵² ¹¹⁵³ ¹¹⁵⁴ ¹¹⁵⁵ ¹¹⁵⁶ ¹¹⁵⁷ ¹¹⁵⁸ ¹¹⁵⁹ ¹¹⁶⁰ ¹¹⁶¹ ¹¹⁶² ¹¹⁶³ ¹¹⁶⁴ ¹¹⁶⁵ ¹¹⁶⁶ ¹¹⁶⁷ ¹¹⁶⁸ ¹¹⁶⁹ ¹¹⁷⁰ ¹¹⁷¹ ¹¹⁷² ¹¹⁷³ ¹¹⁷⁴ ¹¹⁷⁵ ¹¹⁷⁶ ¹¹⁷⁷ ¹¹⁷⁸ ¹¹⁷⁹ ¹¹⁸⁰ ¹¹⁸¹ ¹¹⁸² ¹¹⁸³ ¹¹⁸⁴ ¹¹⁸⁵ ¹¹⁸⁶ ¹¹⁸⁷ ¹¹⁸⁸ ¹¹⁸⁹ ¹¹⁹⁰ ¹¹⁹¹ ¹¹⁹² ¹¹⁹³ ¹¹⁹⁴ ¹¹⁹⁵ ¹¹⁹⁶ ¹¹⁹⁷ ¹¹⁹⁸ ¹¹⁹⁹ ¹²⁰⁰ ¹²⁰¹ ¹²⁰² ¹²⁰³ ¹²⁰⁴ ¹²⁰⁵ ¹²⁰⁶ ¹²⁰⁷ ¹²⁰⁸ ¹²⁰⁹ ¹²¹⁰ ¹²¹¹ ¹²¹² ¹²¹³ ¹²¹⁴ ¹²¹⁵ ¹²¹⁶ ¹²¹⁷ ¹²¹⁸ ¹²¹⁹ ¹²²⁰ ¹²²¹ ¹²²² ¹²²³ ¹²²⁴ ¹²²⁵ ¹²²⁶ ¹²²⁷ ¹²²⁸ ¹²²⁹ ¹²³⁰ ¹²³¹ ¹²³² ¹²³³ ¹²³⁴ ¹²³⁵ ¹²³⁶ ¹²³⁷ ¹²³⁸ ¹²³⁹ ¹²⁴⁰ ¹²⁴¹ ¹²⁴² ¹²⁴³ ¹²⁴⁴ ¹²⁴⁵ ¹²⁴⁶ ¹²⁴⁷ ¹²⁴⁸ ¹²⁴⁹ ¹²⁵⁰ ¹²⁵¹ ¹²⁵² ¹²⁵³ ¹²⁵⁴ ¹²⁵⁵ ¹²⁵⁶ ¹²⁵⁷ ¹²⁵⁸ ¹²⁵⁹ ¹²⁶⁰ ¹²⁶¹ ¹²⁶² ¹²⁶³ ¹²⁶⁴ ¹²⁶⁵ ¹²⁶⁶ ¹²⁶⁷ ¹²⁶⁸ ¹²⁶⁹ ¹²⁷⁰ ¹²⁷¹ ¹²⁷² ¹²⁷³ ¹²⁷⁴ ¹²⁷⁵ ¹²⁷⁶ ¹²⁷⁷ ¹²⁷⁸ ¹²⁷⁹ ¹²⁸⁰ ¹²⁸¹ ¹²⁸² ¹²⁸³ ¹²⁸⁴ ¹²⁸⁵ ¹²⁸⁶ ¹²⁸⁷ ¹²⁸⁸ ¹²⁸⁹ ¹²⁹⁰ ¹²⁹¹ ¹²⁹² ¹²⁹³ ¹²⁹⁴ ¹²⁹⁵ ¹²⁹⁶ ¹²⁹⁷ ¹²⁹⁸ ¹²⁹⁹ ¹³⁰⁰ ¹³⁰¹ ¹³⁰² ¹³⁰³ ¹³⁰⁴ ¹³⁰⁵ ¹³⁰⁶ ¹³⁰⁷ ¹³⁰⁸ ¹³⁰⁹ ¹³¹⁰ ¹³¹¹ ¹³¹² ¹³¹³ ¹³¹⁴ ¹³¹⁵ ¹³¹⁶ ¹³¹⁷ ¹³¹⁸ ¹³¹⁹ ¹³²⁰ ¹³²¹ ¹³²² ¹³²³ ¹³²⁴ ¹³²⁵ ¹³²⁶ ¹³²⁷ ¹³²⁸ ¹³²⁹ ¹³³⁰ ¹³³¹ ¹³³² ^{1333</}

Powers of Chancery.

Judge Blackstone has given another which tho' not complete is the best that has been given. He says the principal difference consists in the mode of administering justice or giving effect to the same principles. and this difference consists of three particulars. Mode of Proof of Facts & of Relief.

1st as to the mode of proof. In this particular Ch. has a great advantage over Ct. of Law. It can compel a disclosure of the facts under oath. This is a power the Ct. has not. Why? The reason is not given in the books, but there is a substantial one viz. that if a party were compelled to make a disclosure, he might be greatly injured by a positive rule of law. In Ct. this can never be done. Ct. of Ch. has no criminal jurisdiction whatever, & sometimes the rights must in a Ct. of Law be maintained with a penalty. And it has therefore become a standing rule in Equity that if the disclosure will work a penalty, the Chancellor will require the party & all others, & compel them to enter on record not to sue for nor take advantage of the penalty. This compulsive disclosure is called purgation on oath, appealing to a party's conscience, & the party may be compelled to make a discovery of all facts within his knowledge. From this power of compulsive discovery, the Ct. of Ch. has obtained concurrent jurisdiction in matters of fact of administration & distribution of legacies & partnership affairs in common.

9 H. 281-2.
2, 34. 449.

9 H. 145
9 H. 148
9 H. 149
9 H. 150

James A. Chandler

in many cases of fraud. where faithful success
 has been met, there are all incident of the power of
 comparative discovery, and then given to the same
 as Equity as at Law.

2. As to the mode of trial. Chancery trials in England are by interrogatories stated in answer, by counsel, & approved by the Judge of which depositions are taken but I think a different mode is followed in

Le 14 avril 1891, nous sommes allés au village de Sene et

Notes on a manuscript given to me by the author. Extracts.

These departments thus labor more or less on a day

Two people will enjoy the opposite ends of the

and a series of generalizations on the subject etc.

which is tr^2 of ρ and might be called the *trace*.

It is natural to consider questions of force

Shelley. As to relief felt in any sense, almost none.

is a relief. It is a wonderful experience for the whole family.

Points are made that will discuss a specific problem.

a co. & Co. of New could only give damages for the

exc. in the green, which is in some individuals.

found in many cases *Ph. salina* is present.

in this new instance as given a more specific remedy.

Handwritten: These notes are taken at [illegible] [illegible] [illegible] [illegible]

Powers of Chancery.

in such jurisdiction. To make the lawgiver sensible
and under the act of Gloucester he might make. But
Chancery will give an injunction to prevent it.

The specific relief is meant that which re-
stores the party in his rights as he was before they
were actually violated. This injunction in the case an-
d now mentioned merely continues him in the enjoy-
ment of his rights as they were before violation. It is
properly called specific. So where Chancery interposes to pre-
vent the effect of fraud in a contract, it affords
specific relief, & vacates the contract either entirely or
partially as justice may require; whereas the Law
will compel a performance, & afterwards give the par-
ty injured damages in an action on the case. So it
requires two suits. Now Chancery prevents the evil, and
preventive is better than punitive justice. In many
cases Chancery will decree for that very purpose.

In some cases in Law to be sure the remedy is
specific, as in Ejectment & sometimes in Detinue.

I have summarily gone thro' the three par-
ticulars, in which a Bill of Chancery differs from a Bill of
Law viz. Mode of Proof - Mode of Trial & Mode
of Relief. But they differ in other respects, &
in these it is more difficult to ascertain the bound-
aries of Chancery, or describe its powers than in the other
three particulars.

The different view taken in a Bill of Law &
a Bill of Chancery of a penal bond gives a great pre-
dilection to the latter. In a Bill of Law the
whole penalty is & must be recovered by the bond

Power to discharge.

of such a bond, but in a bill of sale, the penalty will not
always be given, for the Chancellor may look into the
question, and if he sees that the values are not
equal to the penalty, he will chance the bond, & de-
cree what is really due. In law the penalty is consid-
ered as a debt. In equity it is considered much as a re-
medy for the debt, & not as a debt. Here the bill is to be
dismissed, & a different construction is put upon the whole
instrument. What could have been done in law. True
and so bills of law put different constructions upon
whole instruments, and in some a penalty is not consid-
ered as a debt. As where a penal bond is given
for the security of a debt, & not for the performance
of a condition. The bill has run a long time will
give not only the bond but the interest. Here they
consider it as evidence of a debt.

It cannot then be said with any more jus-
tice that bills of law of law differ in the construction
of these bonds, than that a bill of law differs itself ^{in the} ^{construction} ^{of} ^{discreet} ^{instruments}, where
the penalty is the same & the condition the same. ¹⁸³⁹ ^{2. 26.}
4th On this ground bills of law have gained a very great
& almost absolute jurisdiction of mortgages. The con-
dition here is in the nature of a penalty, and is tak-
en notice of in the same manner by a bill of law:
as the penalty in a penal bond. At law the interest
of the mortgagee is due & hence must be paid at the
time specified in the bill. It is different. This bill has cre-
ated an equity of redemption & has been for most

Powers of Chancery

purposes at Law. Thus it may be said there is a different construction in the two Cts. Altho' it is a general rule that the construction of an instrument should be the same both in Equity and Law, yet the rules of construction may be different between these Cts. as between two Cts. of Law. But this equity of redemption is for some purposes considered in Law so far that when it exists they will consider it such a fact in law as confers a settlement, & gives the person entitled to it the right of voting for members of parliament. The objection is so much weaker now, than it is when there is a different rule of construction of the same instrument in the same Cts. for different purposes. This forms a sound ground of distinction.

5 A technical trust or use in Land or in real estate is contradistinguished from a legal estate of freehold, an extensive jurisdiction to the Cyp Cts of Chancery. But so much in form. Because trust estates have little power here.

5 MS 22.
2 P. Wms 1025.
508

A trust estate is one where the legal title is in one person and the beneficial title is in another. For ordinary purposes Cts. of Law will not take notice of trust legal estate. They take notice only of legal estates. Chancery of equitable estates. In a Cts. of Law the legal title must govern, yet where an estate is given to one to hold for another's benefit &c. there ought to be a remedy provided for him who has the beneficial estate. A Cts. of Ch. has power to give the remedy.

Powers of Courts.

Shaffer in his glosses on 2d 7 has endeavored to give a general description of those powers of Ch. which are not contained in the three maxims of Blackstone. The description which he gives is this. He first says with H. that a lot of Ch. requires its jurisdiction by its different methods of administering justice. Then says 1st that a lot of Ch. has power to enlarge justice where positive law is silent, & where without the disposition of Ch. justice could not be done. 2^d A lot of Ch. may abate the rigor and supply the defects of the C.L., where such rigor and defect is collateral & unforeseen consequence of the rule is promulgated. as he explains this it is correct. But to do these things by avoiding collateral mischievous consequences, is nothing more than giving effect to the true spirit of the Com. Law. And Ch. of Law has a right to judge according to the spirit of Laws. He says if the unjust consequence of a rule of law is direct & obvious, must have been foreseen at the time of making the rule, & if the rule was designed for the cases to which it literally extends, Chancery cannot interpose & prevent the consequences of the rule. Examples of both kinds. 1st

Prohibition to stop waste. Com Law affords no preventive remedy. Suppose a tenant for life then commits waste. Now a lot of Law can only give damages after the fact is committed. But if there is a power vested in the part of the tenant to commit waste, a Chancery Bill which is always open will give an injunction to prevent him.

Powers of Chancery.

Again. It is a general rule of Law that all contracts made between husband & wife before marriage are annulled by the intermarriage. But it seems that those contracts which are made for the furtherance of the marriage should be avoided by the marriage. Now there is hardly a marriage in England without a marriage settlement, and a Ct of Ch^y will enforce that marriage settlement against the O.L. Court to the contrary notwithstanding. A Ct of Law does not show doubts according to the spirit of the rule. And all the decisions of the Law are that such agreement cannot be enforced in Law.

These distinctions embrace all the well defined grounds of the jurisdiction of a Ct of Ch^y, perhaps they do not all.

One ground of the jurisdiction of a Ct of Ch^y which comes under the third particular mentioned by Mr. Sir Belief consists in decreeing a specific performance of executory agreements. This power has been exercised from very ancient times from the reign of Edw. 4th. In the reign of James 1st there was a violent contention between the Cts of Law and the Ct of Ch. on this subject. The former held that Ch. had no power to decree a specific performance, & that the party had a relief only in Law by a recovery of damages, but the Chancellor stood his ground and obtained a complete victory. However at this time there were not firmness the became quite common in the reign of Charles 2nd & of his reign.

100.

100.
100.
100.
100.

Trusts of Chancery.

It is in this manner a specific performance that may be made
may settle upon a person and his heirs and assigns
in a deed. That is, it is a deed.

By a specific performance of an obligation given to a man
that he should do to him some thing he specifies
what he means that the very thing should be done.

There have been questions made whether such a man
may settle upon a person should be enforced, where the
trust is in the form of a legal bond. But it is now
settled that if a man gives to a bond before
marriage, to settle on a wife upon his wife either
after or during coverture, this bond shall be specif-
ically performed as an agreement by the decree of a
Court of Equity. It is not in the form of an execution,
because, that the Court does it as an equity one. The object
was to procure a settlement for his wife, & to execute
it in any other way than as an execution, agree
it would defeat the object. And by adhering to the
substantial object. Such a bond is good
or not at Law, according to this difference. If it
is made with a condition that such a such thing
shall be done after coverture is ended it is good
at Com. Law; but if the thing is to be done during

coverture it is void at Law, because the wife
cannot sue her husband at Law in the performance
the duty of the husband will be soon filled to do the
thing his wife is covenanted. But were payable
during coverture it would be void at Law. Such
a bond was formerly held to be void. Such

11th 531.

10th 93.4
2d 11th 243.
2d 11th 94.
1st or 2d 518.

10th 210.
2d 11th 381.
10th 518.
How or Com. 342-3.

10th 325.

Powers of Chancery.

Again - It is a clear rule of the C.P. that an agreement between husband & wife during coverture is void. It was formerly held that in Ch. such an agreement could be enforced only through the medium of trustees.

1 Inst. 3.

Little 108.

1 Inst. 4. 5.

2 Inst. 22.

3. 4th. 72.

1 do. 270.

2 Ves. 558.

Now such an agreement made during coverture may be specifically enforced without the intervention of trustees. The husband is considered as a trustee for the wife. He has the legal title for her and she has the beneficial interest.

The ground of Chancery's interference in the case, is its peculiar cognizance of technical trusts. The mode of enforcing the contract is founded in its power of enforcing specific contracts. And it is to be observed that when the Ch. C.P. has enforced such an agreement made between husband & wife, the latter in most cases

Wm C. 444.

2 Ves. 191.

855.

1 Wm C. 442.

1 Inst. 112.

may dispose of this property, as tho' she were a feme sole. True she cannot make a contract respecting it which will bind her at Law. She may bind herself as a feme sole according to the Law of Equity, not according to the C.P.

It has been decided in Court in the case of Dible & Barker v. P. B. Brown that such a contract made between husband & wife cannot be enforced in Ch.

1 Day 221.

I observed that an agreement between husband & wife may sometimes be enforced in Ch., notwithstanding the Law rule that contracts be made between husband & wife are void. That the

Powers of Chancery.

consideration of this and the right in a case of
fraud is to be determined by the facts of the
case. It is not enough to say that the contract
was made in fraud of the creditors, unless the
fact of fraud is proved. It is not enough to say
that the contract was made in fraud of the creditors.
And if there is no consideration, an oral agreement
or promise, it will not be good as to the creditors or
bona fide purchasers even in equity. But want
of consideration is no more conclusive evidence of
fraud in this case than in any other. It is not
public evidence of fraud per se. It will not, therefore,
be set aside merely because it is voluntary.
There must be some appearance of fraud. It is
not necessary for me to recite all the facts of
this case. However if the husband is liable in debt
at the time of the contract made to settle so, it is
an act of fraud. So if there is a power of appoint-
ment in another. If the contract is to settle
the whole or a great part of the husband's prop-
erty on the wife, it is evidence of fraud. Yet
if he is not greatly in debt, and makes a contract
to make a jointure or provide settlement without
any fraud of fraud the husband becomes
indebted. Chy will not set it aside in
favor of creditors. The same rule applies to volun-
tary purchasers as to creditors.

Now when any of all these circumstances, then
the contract is void, it is binding of -
as the law is and is a general rule. The rule
has been made an exception, that it is not volun-

Deeds of Charities.

law, & that it was done to defraud creditors. It is a voluntary conveyance in presumptive evidence of fraud, but it may be rebutted.

It appears from several examples adverted to in the preceding chapter of old contracts, & a similar effect so as to attain that object, & that it does without regard to the particular form of the contract. This is the case with a bond given to compel a conveyance of land. Here the Ct of Ch will always compel the obligor to convey the land altho there is no express stipulation or covenant to do so, unless the penalty is in the nature of a fixed damages, and when enforced it is considered as an execution agreement.

If one of two or more joint obligors pays the whole debt, & then as the surety, ever takes an assignment of the bond, since his action is in the co obligors in the name of the obligor. The Ct will order the co obligor not to plead that the obligee is paid & therefore that the debt is discharged. And if the case was such that he who paid the whole was not surety, but will order the co obligor to pay the whole, and give an injunction to prevent the co obligor from pleading a payment in an action on a bond given on the bond. In this case the Ct will order to enforce the agreement between the obligors without the law from the facts as they exist. A bill will therefore be retained on the part of him who has paid the whole, on the ground

1. Bond 94.
2. Bond 94.
3. Bond 94.
4. Bond 94.
5. Bond 94.
6. Bond 94.
7. Bond 94.
8. Bond 94.
9. Bond 94.
10. Bond 94.

Power of Chancery.

ground of an implied contract.

In some cases there would be no necessity of applying to the Ch. in this case, for as stated in *Smith v. Jones*, 8 416, still be for money and take out a writ, & then come down in the books it seems the action would be in Ch.

But if the Chancellor has said the whole is settled this action will be in his favor for money paid to his use. — But where it is a single bond as in the case last mentioned there can be no action of debt, &c.

What regards the sensible cases in which a Bill of Ch. will interfere, the general rule is, that equitable intervention extends to all cases where the subject of the contract or the parties are within the jurisdiction of the Ch. for the Ch. acts in personam as well as in rem. As to the subject, in the books this is correct, for it can be shown that whenever the subject or the parties are within the legal jurisdiction it will extend, as if it would have cognizance of all the cases a Bill of Law would have. But it certainly has no such cognizance. The rule seems thus that where the matter in dispute is of such a nature as to require the interference of a Ch. it will be that Ch. will take jurisdiction if it is the parties to be bound on the subject matter. It is not a matter within the jurisdiction of the Ch. the rule in the books stands thus.

Powers of Chancery.

have been expressed in the negative. That Chancery does not interfere where the subject or parties are in a country within the jurisdiction of that Ct. — Thus suppose a contract to convey land in Egypt to, and receive the Kingdom; this is such a contract as requires the interposition of Ch^y, for the decree specific performance of contracts. This then is with in the rule, for altho' the party is not in Eng. still the the land, the subject is within the jurisdiction. If acts here in rem. So if it in Eng. agrees to convey land in the U.S. to the Ch^y will enforce this because it acts in personam, as well as in rem. There are several cases in the Eng. books on this subject.

But where neither person, nor subject is with in the jurisdiction of a Ct. of Ch^y, it cannot interfere whatever the nature of the case may be.

Formerly it was holden that this Ct. could not act in rem, i.e. it could not specifically enforce it's own decrees, but that it could only act in personam. This has long since been overruled, & it is now settled that Ch^y can by issuing process to put a party in possession of Land (with in it's local limits) act in rem as well as in personam. While the old opinion lasted that Ch^y could not act upon the subject matter of the contract, it would have been obligatory for that Ct. to have made a decree respecting the sale of Land. The practice of acting in rem first began in the reign of James 1st.

2 Burr 122.
1201 204.

1 Ves. 444.
454.

1 Dubl 91
1 How. 89.
30 Bth 275.
289
1 Atk 529.

1 Ves 454.
1 Bth 51.

Powers of Chancery.

I have considered the various grounds on which a bill of specific performance is granted, but I have not considered the particular cases under that general ground, in which the writ is granted.

Generally however they will decree a specific performance of agreement properly falling within its jurisdiction in those cases & those only, where the Courts of Law will give damages for the non performance of the agreement.

1 Atk. 211.

1 Bull. 134.

2 Prec. 211.

Atk. 211.

On the contrary they will not generally decree a specific performance, where the Courts of Law will not give damages altho it may fall within its jurisdiction.

And they will not decree a specific performance of covenants because the Law will give damages for non performance. It must fall properly within its jurisdiction. An obvious reason for this distinction may be furnished by recurrence to what has been said. This decree of specific performance is generally only an aid to the remedy furnished by law; or in other words this power is exerted principally for the purpose of giving a more complete & adequate remedy, where the Law gives but an incomplete & inadequate remedy. The principles in the two Courts are generally the same, tho they have different modes of proceeding.

In instances of this they will not enforce a covenant against a wife & her husband & wife.

Powers of Attorney.

How 241.
at the 2.
has 250
St. 28.

because for a breach of a voluntary agreement a plaintiff would give no damages, even on a contract under seal, and the will not give a right which the contract was not to give, and such a voluntary agreement is in law a nullity.

That there are exceptions on both sides of this rule. 1st A specific performance will not always be enforced in Chancery, although the Ct of Law would give damages for a non-performance of the agreement.

Thus suppose that after an executor's account is ordered into for the conveyance of land, and a third person not a party to the agreement has become a bona fide purchaser & got the legal title.

Here Chancery will not decree a specific performance because it would be unjust to the purchaser. He has paid a valuable consideration and he was ignorant of the agreement, it is no longer a bona fide purchaser without notice. And against the other party it is impotency. He has become insolvent. But it should be specifically decreed.

How 286.
at the 289.
282. 289.

It is the view of a Ct of Chancery. But in this case a Ct of Law will give damages, & the cause of the damages is the want of relief from a Ct of Chancery. The equity is the same on both sides, and it is a rule that where equity is equal, law must prevail.

Such an agreement as to conveyance on a valuable & adequate consideration, will bind the parties as against intermeddling judges & creditors, because the

James A. H. H. H.

have not a specific act upon it. Therefore, if the consideration of the action is more inadequate. It is a general act of encounter upon the land, but the execution amount as a specific act and shall have the priority. This is different from a direct conveyance to a third person.

So also where the bill is for a specific performance, to accept a sum of money & pay the consideration money. But will not where a specific performance is where the title of the Pl^t is under enlargement, not immediately commensurate, the damages might be recovered at law. It would be inequitable to do so. See a specific performance, & yet accords to the mind and of Law. He must pay damages for the non performance.

2^d A person covenants to convey Land to another which actually belongs to a third person. The 2^d will not complete a specific performance of the contract. Yet damages in such case will be recovered in law.

I observed that there were exceptions on the other side of the rule viz that the wind was not a direct resistance where the downs were met as given in Law.

An instance occurs in case of a Lord's son
whose name is some noble title, sometimes
now in use this land is held by the wife
marriage, of course the son is no longer the
Lord will compel performance of it. As when a son

James of Chancery.

role made such an agreement to convey lands to her in-
dented husband. Dower could not be given for a
breach of this agreement or law. But Ch^l is competent to
specific performance of it. The reason is a plain one.
It is almost obvious to everyone that a civil action
should be between husband & wife; & recovery in
a bit of land is such a thing & therefore an exception
might have just as reasonably. But is Ch^l the officer
to do her property over. She has no except from this
to which will not do for her reason. She here acts
in rem & she cannot only to the extent of her prop-
erty, for she is not bound under the law as a person
other would be. The canon is considered binding only
as to the subject & extent of it, only as a thing in rem.

So also in the case supposed. So also in the case
supposed the intended wife who contracts to convey
lands to her intended husband, Ch^y will decree
a specific performance of this agreement altho' she
was an infant, if her parent or guardian consents
to it in, & it was made an antenuptial conveyance.

Another instance of this kind is where one lends money to an inf^r to purchase necessities, and he actually extends to him necessities. Now in such

the honor then left as there to be retained in
the inf^t because his privilege is not to be destroyed.
But the fact that inf^t would be subjected and
the same as the other of the company, a member
There is no danger that his privilege will be in-
fringed. It is the same as the other of the

Powers of the Court

seller of the necessary, complete justice then is done
to the buyer, who is interested. This is a case for
relief in which relief is not specific.

So also when the agreement is made under the
seal of the Court itself, that it will enforce the
contract the Court of Law would give no damages
for a breach of it, as in the case of a judicial sale of
an estate in Chancery. The purchaser undertakes to act for him-
self but the seller acts for the Court. The Court is
a judicial proceeding. A Court of Law cannot in-
terfere, because it never interferes in the judicial
proceedings of the Court, or any other independent judicial
tribunal. It is concerned in the Court's proceedings and
the master to sell off the estate is under the
Court's power as to any effect to its decrees. The sale
is called a judicial sale.

Further, where the condition of a bond is de-
pendent on the binding force of a contract ex-
pressly made at Law by the obligor's becoming executor
of the contract, the Court will enforce the contract in
favor of those who have higher claims than the
obligor. It however cannot act in Law.
The Court will enforce a bond to the obligor's satisfaction
but not the obligation, as expressed in
the bond. It cannot be enforced. The reason is the
same as in the case of the bond. The Court cannot
act in Law. But in one case in the Court's power
to act in Law, which is the case of a bond to
pay to the creditor or legatees of a deceased person.

2 Nov. 11.

2 Nov. 11.

2 Nov. 11.

Powers of Chancery.

It is considered as the master and Ch^y having cogni-
sance of trusts, decides the performance.

Mr. Tinsell states the distinction when Ch^y
will & when it will not decree a specific perform-
ance. Where money & wants not be recovered at Law
is the: If there is a good agreement in substance
for one which is enforceable in Law in season
a formal defect, Ch^y will decree a specific
performance. But where it is inflec-

the is Law by the non happening of events as pre-
sented in by the agreement. Ch^y can give no relief
therefor. This distinction is great. The former is
hardly coming, the idea intended. My formal
defects are here meant more mistakes in the
writing. It never often an interest defect in
the thing, all the cases before mentioned are recited
as formal defects. This is not using language as we
have use it.

I have observed that a lot of Ch^y will ge-
nerally more a specific performance, where the sub-
ject falls within its jurisdiction. Yet it is to be
observed that if the damages which at Law would
be an adequate remedy, they will not generally
decree. If the falls not within the jurisdiction
of the Ch^y, an adequate remedy can be obtained
at Law there is no necessity of going into Ch^y. It
is now necessary to state in a bill in Ch^y that
adequate relief cannot be had at Law else the
bill is demurrable.

Ch^y 232.
233.
234.

Ch^y 235.
236.
237.

Power of the Court.

And that the contract is such in its nature that an adequate remedy might be had at Law, if any could be had. But if under all the circumstances of the case, it appears that a Remedy at Law cannot give adequate relief, the Court will interfere whenever the nature of the contract may be.

There are certain cases where the Court interferes of course, because relief cannot be given at Law.

There are others where it interferes on account of the nature of the contract being such that Law cannot give adequate remedy. Here it assumes a jurisdiction collaterally. When therefore it is said that the Court will not interfere, where adequate relief may be had in damages at Law, it is not meant that the Court is ousted of its jurisdiction, under all circumstances of the case.

Another general rule is that the Court will not in general decree a specific performance of a contract respecting personal property, because a Remedy at Law can give an adequate relief. The damages given are generally an adequate remedy. There being no remedy at Law, the Court will interfere.

This is a general rule, it must be regulated by the particular circumstance of each case, modified or qualified by the general exception. But where the case has justice plainly require a specific performance the Court will decree it, although it relates to personal property. The presumption is that damages are an adequate remedy.

Terms of Contract.

for a breach of contract respecting personal property.
But this presumption may be rebutted and a
specific performance required. Thus where
A contracted to save B's horse left from certain and
he had to perform as it respected third persons
at different times. B had desired a specific perform-
ance because justice required it. If the remedy was
now to be obtained, it would require an action
by B for every circumstance of which it was
agreed to save him horse left. So that the action would
be brought against B in all these cases, & he then
would have his action over against A.

5. 11. 383
1. 11. 384
2. 11. 385
3. 11. 386

In another case where there was an agreement
to sell one acre of land & purchase on the other 100
acres of land & pay at different instalments. Now
there might be many actions brought at Law
on this contract, & therefore B will desire a
specific performance by which this is prevented. Perhaps
also the credit of the purchaser depends upon the
fulfilment of the contract.

Another exception to the general rule is where
the contract is in respect of personal property that B will
not desire to have an action at Law with the dam-
ages, but will desire a specific performance.

And where there is a chain of damages or one
land goes to another & then to the other & so forth
and one of the parties is where he brings an action at
Law against B for a breach of contract, B will be obliged
to pay against A in B's favour the contract is made

Powers of Chancery.

by fraud. Now as W has brought them into Ch^{cy}. A man
like his craft but, & great relief, here Ch^{cy} if they find no fraud will decree a relief. In this case
damages might have been given at Law. 1 Mac 69
22
2 How 213.

And if to a bill brought on a contract of
a personal nature, the dft does not demur at the
ground that relief ought not to be said in Ch^{cy}; but
files an answer Ch^{cy} will decree, because the dft
carries all right to the objection & jurisdiction
is admitted. Gell. Co. 9.
21
2 How 216.

On the other hand if the agreement respects an
interest in Land, or stipulates for some act in
specie to be done Ch^{cy} will regularly decree a
specific performance because damages at Law
are not of course adequate remedy. 1 Mac 57.
1 Moll 2708.
357.
2 How. 219.
1 B. W. 684.

A voluntary agreement however of this kind
will not generally be enforced. In fact this rule
must be understood with the qualifications
before mentioned. If then A enters into
articles of agreement with W in which he covenants
to deed a farm of Land to him upon sufficient
consideration, within a limited time and afterwards
refuses. — W will compel him to do it i.e. to
convey the legal title to him, by a bill filed in
Ch^{cy}. All that W could do at Law would be to re-
cover damages, which might not be an adequate
remedy. And when the result is as one side & the
personally v. the other, Ch^{cy} will decree a specific
performance by a bill filed by either, And this
is

Powers of Chancery.

is just & equitable. The same. It ought to be open to both, & the remedy ought to be mutual.

But here I want to say that a contract or agreement is not the party to a specific performance. It must be specific & particular, strong & hence a general contract for carrying lands without mentioning what land or will not be specifically enforced in Ch^{cy}. The intended seller is the trustee to the intended purchaser & therefore the latter has a lien on the land. But in this case he has no lien upon the land, because they are not specific. The tax is considerable little and more than there can be a little in the land not specified in a deed. In fact there must be an equitable lien.

As a general rule he who demands the specific performance of a contract, must show that he is ready & willing, or has given, or has given, or other words. The who seeks equity, must do equity. In a Court of law, there are what are called conditions precedent, and those which are called conditions subsequent. Now here where the right of action is to accrue by some act of his own, he must give performance or what is equivalent to it. But in Ch^{cy} he who seeks the specific performance of a contract must show that he has performed his part or what is equivalent to it, or other words besides those where the condition is precedent, or where he is not bound to do certain things before a remedy can be given in his

Power of Chancery.

since agt the other party. Thus if one party to a contract is bound to do what the other party is to do for it. If one party is bound to do what the other party is to do for it. If one party is bound to do what the other party is to do for it.

This difference is not founded upon a difference of construction in the two Ch. It lies in this. The remedy at Law is strict & precise. A Ch. of Law must interpose when a contract is broken or debt is justly due. But the Chancellor interposes according to his discretion. He must therefore must do equity before he can have it.

Another general rule is, That where the plff is a bill in Equity, has done a part of what he was bound to do, & is prevented by subsequent events from performing the residue, he cannot obtain a decree agt the other party. — Thus where A agreed to pay B \$1000 within 2 years, in consideration that B would marry his daughter & settle a fortune upon her. B married her, but she died before the 2 years had expired. After her death B brought a bill in Ch. to recover the money from her father, but the Ch. would not interfere & dismissed the Bill. The plff here covenanted to do two acts, one part of which he performed; time he was prevented from doing the other by the act of God, but it was a condition precedent which did him no injury.

1 Bull 382.
1 Bl. Ca 508.
1 Mos 89
2 B. 519.
Calhoun.

1 Bull 382.
1 Bl. Ca 508.
1 Mos 89

Power of Chancery.

manning & mauling their ship. Unless then they could have subjected the freighters they could not have been in statu quo, they might have been great losers.

Observed by way of general rule, that he who seeks the specific performance of a contract, must show that he has done his part, or what is equivalent to it, therefore his readiness to perform is equivalent to actual performance. And this is the rule both at Equity & at Law. ^{12th 119} When the party seeking relief has been ready to perform, & the other party would not accept the performance, & prevents him from performing, Ch^y will pass a decree in his favour. ^{12th 88. 9th 11. 12th 12.}

But a bill of Ch^y will not secure the specific performance of a written agreement, if it has been discharged by parole. — It is a general rule that parole evidence is admissible for the purpose of rebutting an equity, & this even as to a deed. This rule is peculiar to Equity. But a parole release will not discharge a deed in Ch^y. The Chancellor has a right to interfere by reason of his extraordinary power, i.e. he has a right to interfere discretionarily, & on this ground it is that parole evidence is admissible for the purpose of rebutting an Equity. But in the case of the deed ^{12th 119} which the Ch^y does not interfere the deed the testimony is introduced to inform the Chancellor's conscience whether the party requiring a specific performance has destroyed his right to do so by a parole ^{12th 119}

Powers of Chancellor.

18th 1881
19th 1881
20th 1881
21st 1881
22nd 1881
23rd 1881
24th 1881

not discharge; the Chancellor upon finding that the case only reduces to under power & leaves the decision as it was before. The deed is not destroyed, for a recovery may be laid out upon it, a partial discharge to the contrary notwithstanding.

Thus if it cannot be made real to recover under it in its mouth. He discharges him by partial. Let him be bound a bill in Equity to compel him to a performance. Then the partial discharge may be enforced to submit the Equity. It is not in fact conscientious that he ought to be discharged.

Again where the party in Equity claims a specific performance of an agreement, has he many years let it lie without insisting upon it, - he is not entitled to a decree for specific performance - unless the delay is accounted for by special circumstances. If he has once he has waived his right. It is the principle that cannot be denied. He waives the presumption that it was an accident. It is not the agreement. It is a different construction. That a delay of this kind may be explained by circumstances which shall excuse the passage of time, & so avoid the waiver. In general however, it is difficult to rebut such a presumption as this.

18th 1881
19th 1881
20th 1881
21st 1881
22nd 1881
23rd 1881
24th 1881

That no length of time will prevent a bill of specific performance, as no time has appeared. In general no great importance is shown in the fact that a specific performance is not a presumption as the

18th 1881
19th 1881

Power of Chancery.

It of Law will give damages, but in the case of fraud
the court there, there is no presumption in favor of no
man can be presumed to have acquiesced in a fraud.

I have observed that he who seeks equity, must
do equity. It is to be observed however that the
plff's complaint is as his part precisely at the time
he is asked to have him from obtaining a decree
in Ch. - And the reason is said to be that if the
rule were otherwise this relief could seldom be given. ^{Attk. 2}
^{2 Bro. Ch. 279.}
It is said by Lord Ellenborough that this rule has been ^{East 22}
altered. That Ch. requires more punctuality than formerly.
I do not know what the late decisions are.

As a Court of Equity thus exercises its discretion
it is a general rule that if the plff who seeks relief
has shown any unbecoming conduct in performing his part
he has generally no favour from the Ct, especially if
the circumstances are altered, so that the other party
may be injured. The rule as laid down is - "if he ^{5 Vin. 528}
^{Mr. H. Ch. 27}
^{2 How. 252}
has trifled with the performance of his part". Here
then you see the great discretion of which is left for
the Chancellor to exercise.

But with respect to the necessity of the plff's
performing his part, that he may obtain a decree against
the other party, there is a great difference between
marriage settlements & all others. The general
rule that the plff must have performed his part
or done what is equivalent to it, does not apply
here. For if you are generally purchasers & in these cases
no doubt the Ct. will compel one party to perform his

Powers of Chancery.

his part, altho' the other has failed to do his.

Thus if covenants to settle property upon the intended wife & her issue; He does the same as respects him & his issue. He dies without doing what he covenanted to do. The children obtain a specific performance from the father in Ch. The reason is the children are in no fault for the non performance of their mother. They are as much purchasers as the mother. Now ordinarily when the wife requests a performance decree in her favor without having done his duty, the answer is you have not done your duty. But in this case the children were not compellable to do any thing. They were not bound to perform, what their mother covenanted to do. Therefore they shall have a remedy.

The rule is precisely the same as respects the wife if she is not a party. Thus suppose the parents are the covenantors & covenantees. The husband is also a party, but the wife is not. Now the wife's father dies without having performed his part, or perhaps he is insolvent. She shall have a remedy against her husband in Ch. who will decree a specific performance against her husband. All she had to do to entitle herself to a remedy was to marry.

I have been treated at the same as a Ch. to decree a specific performance of contracts.

In pursuing the same subject I would observe that if after an executors agreement is entered into a statute intervenes which renders

2. L. 445.
ies. 377-8.
2 Nov. 25.

Powers of Chancery

a complete performance impossible; a Ct of Ch^{cy} may decree ^{2 M. & C. 99.}
me a partial performance if the party requests it. ^{1 Simb. 309. 11.}
and it can be done consistently with the stat. ^{1 M. & C. 51.}

Thus where a lease was made in a conveyance for 99 years, & a stat afterwards rendered it impossible for them to make longer leases than for 99 years.

Chancery decreed that this lease was good for 99 years.

This is enforcing what is called the cy pres as near as may be.

In a Ct of Law this could not be done nor any thing like it. If the party had sued at Law for non performance, it would have been a good defence to have proved that a performance of it was now made unlawful and as a Ct of Law cannot enforce a contract, it therefore must have given judgment for the deft.

The same is true where complete performance is rendered impossible by accident or the act of God. ^{1 M. & C. 248.}
^{18, Ca 18.}
^{2 M. & C. 539.}

Thus if a conveyance be convey to A a grove of trees standing timber, & before the grant is actually made a tempest should blow down one half, then a Ct of Ch^{cy} will enforce A to convey the residue. And in such a case they will compell the party seeking a remedy to pay in proportion to the part performance.

This doctrine of cy pres is recognised at Law, where the contract is executed. A Ct at Law will decree that the contract shall be over & stand. For the formerly doctrine is now settled. Thus if A conveys B to him & certain of A's lands to upon B's wife, with a remainder upon her issue in tail, & the wife should die

Powers of Chancery

181 H. 731
25 H. 204.
25 H. 181.
1 Inst. 210.
522

die immediately, & the party authorized to limit it, ~~should~~
should limit it upon the children, this will be a good
imitation at Law. If it were executory Ch^y would
order it to be enforced.

This interference of Ch^y would seem to militate
against the general rule that a contract the performance
of which is rendered impossible and made unlaw-
ful by a stat, is void. But upon a fair construc-
tion of the stat, it goes no further than to render
performance unlawful, as in the case of a lease for
20 years - for so long a time. The rules are therefore
strictly consistent.

Where one acting under a power convey, a great
er interest than he has a right to convey, the con-
veyance or grant will be good in Ch^y for so much
as he had a right to convey. — Thus A has a right
to make a lease for 10 years & he makes one for 20
This lease is good in Ch^y for 10 years tho' in Law
it is not.

181 H. 740.
1 Inst. 212.

181 H. 202.

And there is a new material distinction to
be taken between the construction that Ch^y will
give to certain words in an executory agreement
& the construction which both Chancery and Law
will give to the same words in a contract executed.

The distinction extends to certain cases where
real estate is limited to one & his heirs general
or special. Now it is a rule of Law settled in
the time of Ed Coke, that 'when one conveys, or
grants or devise to A for life remainder to his
issue

18099
1 Inst. 256.
1 Inst. 399
52 H. 299.
240.

Powers of Phancery

issue or the heirs of his body, & takes an estate tail, & generally whenever an estate is limited to one life the remainder to his heirs general or special the person to whom the life estate is limited takes the inheritance. This is the construction given to the words in a contract executed. The reason why such a construction is given in law are numerous & well founded. In deeds of land, the words of limitation, not of purchase, & cetera they cannot take as remainder men, & if they could not take, they would take only a life estate, for want of words of inheritance applied to them.

But however in executory articles to convey 2 Wms 41. the same words are used, as if to it for life &c. 1 Co. Cas. 592. & Vern. 688. & then upon his eldest son &c. and an estate of if one or his heirs then to the second son &c. 2 Wms 340. 5 Co. Cas. 527. Des. 238.

There is a great difference in effect between the construction of these words in a contract executed & executory. For in the former case he may do what is done by lawyers a fine or suffer a common recovery. But in the latter case he cannot do it. For the law will follow the intention of the grantor or deviser generally not particularly. But the law will so construe the instrument as to give effect to the particular intent of the grantor or deviser. Thus in the case supposed, where the contract is executory & shall be tenant in tail, and the general

Powers of Chancery

real intent of the grantor is followed, because his children will most probably have it. But in *Edw* it will only be tenant for life, & his children shall not by any possibility be defeated of the estate; and here the particular intent of the grantor or devisor is followed. As the articles do not themselves, in the case of an executory agreement, convey the title, *Edw* will do it & give effect to the intent of the person making the instrument.

And they will go farther, for if in pursuance of an executory agreement made before marriage a settlement should be actually made after marriage, they will set it aside & order another to be made. And the reason is the words in the grant, after marriage have a different construction from the same words used in the executory agreement. They do not therefore consider the agreement as performed.

But if in pursuance of such an agreement as this before marriage, the settlement should be made before marriage, *Edw* will not set it aside, unless the settlement is expressed to be made in pursuance of articles contained in the agreement, because the parties being sui juris, the *Edw* will presume they made a new agreement, but when this presumption is done away by the expressions used in the settlement, they will set it aside. It has been said that these rules will obtain only in favor of males, not in favor of females. There is no reason for this distinction, & it is now denied.

Edw 299.
Edw 299.
Edw 299.

Edw 129.
Edw 129.
Edw 129.
Edw 129.
Edw 129.

Tenures of Chancery

In every execution agreement and every
 such specific, it is a great leading principle that
 the Act of Chancery is done, that which any party ^{shall see}
 be done, and that from the time it is entered into ^{the time}
 it is entered into, until some other time ^{shall see}
 pointed. This rule leads to very important consequences,
 so that it has been called by Sir J. Hyll the
 omnipotent rule.

When this ground it is that an executor
 becomes a specific lien upon the subject of
 of the grant. It becomes a lien upon the property
 intended to be sold. Hence the vendor is considered as
 trustee for the vendor, and as his heirs or his death.

This rule it comes to the same result to his
 next form a lien on the land. The intended purchaser
 is vested with the equitable title. But it is consid-
 ered a trustee for Mr. Fine & sold. the legal title, but
 it may claim & obtain it out of his hands by ap-
 plying to a Bill of Chancery.

In pursuance of this great principle has
 settled that if any person enters into any articles
 by which he binds himself to lay out money in
 purchase, or if he desires money for this purpose & ^{Nov. 89.}
 gives his own name to this money as real estate ^{18th 90.}
 altho it never was actually made laid out in Land. ^{18th 90.}
 It is considered as real estate from the time of
 the articles entered into. It is no matter whether
 the money is in itself. Even if it can be identi-
 fied it shall be so the law.

Dowers of Chancery.

The same rule also leads to this important consequence. If a woman before marriage has bound herself to lay out money in lands, & she marries, & dies before she has completed the purchase, the new husband shall be tenant by the curtesy of it and the wife will submit that the sum specified, shall be laid out in lands, which shall be conveyed to him for the life & then to her children, or it will order that he shall have the interest of it for life. The reason is founded on some quaint notion in which it was anciently decided, and it has now become a general rule of equity. Yet in the case if it had been husband instead of wife she could not have been tenant in Dower of it.

In fact a husband may be tenant by Curtesy of a trust estate, but the wife cannot be tenant in Dower of it.

Further the money thus allotted to be laid out in lands will pass as a Dower as real property, & as the other lands it will not pass as personal property to a legatee.

But it makes no difference in case of the wife, whether the money is identified, or whether it forms a part of the general mass of her personal property. In both cases it is treated as her Land.

Consider that as Equity considers as done, that which ought to be done, where money was spent to be laid out in Land, it will be considered as Land.

9th Nov. 1791.
on 5th Dec.
2 Nov.

Capital. 1000.
1st Nov. 1791.
2 do. 1791.
3 Nov. 1791.

Law of Succession

But this will not be done unless the agreement be positive. — If it entrusts money to another to remain in his hands that it might be paid as to his daughter the other died, & it was held that the money was still the general property for there was no express agreement. 12th 221, 222, 223.

Thus if a man should enter into an agreement to vest a certain sum of money in the public funds, or in land for his son at the election of his son, & before he makes it dies, it will go to his executors as personal property. 12th 224, 225.

All these rules hold & converso for if a man having land agrees to sell it for money & dies it shall go to the executors as the avails of it as personal property, & not to his heirs. This is in pursuance of the general principle that all contracts are done unless otherwise to be done. 12th 226, 227.

It follows from this general principle that after an agreement for the sale of property, such as one in Equity will enforce, the venditor shall be liable under the articles for all the consequences which happen to the property from this time the agreement is entered in to the vendor being in no fault. 12th 228.

Thus where one covenanted to convey a plantation in Jamaica, & before the conveyance was made the great earthquake destroyed it. It was held that the intended purchaser should make the loss. It was made an agreement to take a lease from Mr. La. three years & take a conveyance at a certain time & before the time arrived one died. A specific performance was enforced in Ch. The ground is, from the time the articles are entered into, the purchaser 12th 229, 230, 231, 232, 233.

Donors of Chancery
is considered in Equity as the owner & the seller as the
owner of the consideration money.

1801, 2, 39.
There is a case in 2 Bl. 214 where Sir J. Popham
seems to deny this doctrine as regards. But it is a mere
dictum. He there refuses to decree the specific per-
formance of the contract, because it was a mere mat-
ter of moonshine, a piece of swindling. There is any
where cases from which it would appear that this
doctrine was denied but from an examination
you will find that there is nothing in it contradic-
tory.

2 Bl. 99.
Purchaser remarks if the contract is not
properly a contract of sale but merely a contract
for a future receipt with respect to the subject,
the property is not changed in Equity, and these con-
sequences do not follow from it. But this is mean-
ing the reason is that one of the parties shall have
the preemption or refusal.

With regard to the rule that money, articles to
be laid out on lands is generally regularly consider-
ed as laid from the time of entering into the article.
It is to be observed that if he who is to have the land
when purchased is to be tenant in fee simple and if,
he may at his election, retain the money, or have it
paid out in land as he pleases.

1 Publ. 413.
2 Nov. 112.
Thus A cove-
nants to appropriate \$1000 to purchase lands in fee
simple for his son. Now if the son dies his heir in
fact will have the money. Still the son may waive
the agreement if there is no objection from the opposite
party, & if he does & dies, the money will go to his
exec.

Journal of January.

spec. In this case there are no third persons who are to be injured. But in the case of a fee tail it is different in the issue & demands the same issue & answer.

Now still to take this case under the general rule, even when he who is to be benefited by the purchase would be tenant in fee simple, he must show an election to consider it as money, & not to do so decides it a conveyance issues between his heirs & expects it shall be considered as land. It is necessary then that an issue arise or after he manifests his election that he declares in his will that it shall go to his spec. & heirs. So if he demise it away as so much money & appropriates for the purchase of land, it will go to the legatees, & leave proof of facts or his own declarations that he intended it should not be appropriated on the purchase of land is evidence of his intention. So if he has received part of the money, for this is to rebut an equity. This election is confined to the tenant in fee simple. It is personal & dies with him. As between his real & personal representatives, one cannot make an election in preference to the other. There are the leading distinctions on this subject. I observed yesterday that the general principle that property is considered as transferred from the time it enters into the agreement, only refers to those cases where a bill of exchange will decree a specific performance.

The want of mutuality in an agreement is a decisive objection to a decree for a specific performance

4th. 11th 1795.
2d. 2d. 1795.
2d. 11th 1795.
17th. 11th. 1795.
2d. 11th 1795.

Powers of Chancery.

power in equity. It is a power which will make it void at law, but at law it is not void, it is only void in equity.

Thus when a deed is void at law, it is not void in equity, but it is void in equity, and it is void in equity.

Case 1st.

Case 2nd.

Case 3rd.

Take it, upon a bill for a specific performance, it was dismissed for two reasons 1st the want of certainty, as we know how much \$1000 left there any other number would give it. 2nd recently for want of consideration, it was not found binding. It was held that.

but if the agreement were originally mutual no subsequent event, which occasioned a breach of mutual obligations, however late it was, would be any objection to a decree for a specific performance. This is evident from the cases before, where the subject of the contract was a specific performance.

Case 4th.

Case 5th.

Case 6th.

The value the agreement was to convey an estate in consideration of an annuity, and before the annuity was paid, the annuitant died, & before the party to convey the estate.

And where there was an agreement for the sale of stock, & an enormous premium given stock was high, & before the conveyance was made at the price, a specific performance was decreed in Ch.

Thus far with respect to the power of Ch. to enforce the specific performance of a contract.

Power of Penalties
With regard to Penalties

It seems that in general it will not confer an advantage to be liable of a penalty, as it comes in on by the means of entering a bond.

From this it is laid down as a rule, that when application ^{is made} to the Ch^o for a specific performance of an agreement, the non performance of which may incur a ^{penalty} ^{1 Vern 11} ^{2 P. 204.} it is necessary for the plea in the bill against the waiver the penalty else the bill will be demurrable. In such a case the bill is not barred by answer. The reason seems to be that, that if the answer denies the violation of a contract, the bill might need to be drawn the execution of the bill is not barred by the answer. The reason is not because, it is necessary to waive the penalty that it is not to be denied it, rather they never do.

It is not universal law that the bill will not be demurrable to be taken, of a penalty.

When the substance of the contract is enforced without penalty the non performance of it by an agent ^{2 P. 204.} ^{1 Vern 176.} ^{2 P. 520.} ^{2 Vern 516.} ^{2 P. 228.} ^{4 P. 2228.} of one party to the contract will have no place in the bill of a bond. When the bill is drawn against the non performance of a contract, and order the obligor to do it from an action at Law on the bond.

But when does it happen that the substance of the contract can be enforced without the penalty. Since in general where a compensation can be made for a breach of the condition, according to a clear rule of damages the subject of the contract can be enforced, as in the best case of a penal bond.

damages be awarded.

There is a perfectly clear rule of damages in this case.

2d. 208.

As in the case of a mortgage, this is not considered as a purchase, but as a pledge. It is an accident — the payment of the money is the principal. Here then the object of the parties is obtained by the payment of the principal interest and costs.

2d. 208.

2d. 208.

Where there is no rule of damages a bill of Equity cannot relieve against a penalty. In such case there cannot be any compensation according to a clear rule of damages. — It may be said however, that it is a bill of Equity, and the court has a discretion in such cases. Here if he does alien he forfeits his share and the court cannot relieve against it because in this case there cannot be any clear rule of damages.

But if there is a rule of damages, & by reason of unforeseen events, no compensation can be made as a substitute for the penalty, the court cannot relieve against the penalty.

As where it is in marriage articles agreed that if he did not settle a jointure within 2 years upon his wife he would forfeit her marriage portion, & she died before the two years expired, here the jointure would be the rule of damages, yet the wife is not alive to receive the compensation.

According to the rules then said above, there is no such rule of damages by which a compensation may be made, or if there is a rule, yet there cannot be a compensation by reason of unforeseen events.

Howers of Finance.

ments & charges cannot reduce yet the property. These
are not independent of the general law, & are
subordinate to it.

Where one party voluntarily stipulates an
advantage in favor to another on certain conditions,
the latter must lose all advantage from the stipula-
tions unless he strictly adheres to the conditions, at
least they operate as a bar.

Thus if a creditor agrees to take up the
note of his debtor, provided the debtor will pay it at
a day certain, he must pay it on that day, & he
will lose all advantage from the agreement of the cred.

The stipulation on the part of the cred^r is purely
gratuitous. The condition is in the nature of a promise
but the penalty in this case does not as in others
make an injury. Altho' the law will compel a man to be
just the sake of a honest law it will not compel him
to be benevolent.

It is also a general rule that when a law of Equity
interferes with a promise in favor of one party, it
will decree of course a specific performance of the
other. And as the other law where it will not
interfere with the promise, it will not enforce a specific
performance. This is founded on principles of justice.
As the law of equity denies the party of the advantage he
might take at the contract & law, it will compel
the other party to do him justice i.e. to perform
his part of the agreement.

So if a covenant to convey land to B. on
a specified day, B. will enforce it the penalty being

1000
Barnard 480
H. 2. 100
1000

Power of Chancery.

as the same may compel a specific performance.

But on the other hand it will not decree a specific performance where it will not relieve of the penalty. Because the penalty is the substance of the agreement & therefore good equity where justice does not require that relief should be had of it. The party can enforce the penalty at Law, which being the substance of the agreement Ch. will not interfere, because it would give the party a double advantage.

1. Encl. 1.

It was formerly held that where an agreement contained a penalty, the party bound had his election to do the thing agreed to be done, or to pay the penalty. But this is now the rule at Com. Law. He must now do the one or the other. But this is not a general rule in Equity — It is thus laid down in 2. "Where the penalty seems to be a security for the performance of something collateral, so that the 'enforcement' of the collateral object seems to be the one intended to be secured, Ch. will relieve of the penalty on one side, & enforce performance on the other". This rule must be understood with the qualifications before mentioned viz "Whenever the circumstances are such that performance on one side cannot be enforced, & where the substance of the contract cannot be enforced without the penalty. But will not relieve of it, as to the general rule see the case of a penal bond which is merely a security. So in the case of a mortgage, which is in the nature of a penalty.

1. 1st Pl. 218.

2. 1st Pl. 218.

1. 1st Pl. 218.

1. 1st Pl. 218.

2. 1st Pl. 218.

2. 1st Pl. 218.

2. 1st Pl. 218.

2. 1st Pl. 218.

Towers of Chancery

But is generally, but in an instance arising
the court will not decree specific performance. This law
one it not done, unless the other party swears that he is
bound to do.

But where the sum to be paid on the non performance
of the agreement is in the nature of ascertained dam- 1 Bull 142.
ages a Court of Equity cannot decree specific performance. In such a case no other remedy is not considered as a security. 2 H. R. 417.
for the collateral remedy, but as a compensation 2 H. R. 119.
for the loss of it. In such a case as this the party bound 2 H. R. 32.
by the agreement has his election either to reform the
agreement or pay the sum stipulated as a compensation
for the non performance. Here the C.D. rule applies.

Thus where in a lease the lessee covenants to
pay £5 for every acre of meadow to be sowed & ploughed 4 H. R. 2228.
the Court cannot decree specific performance because from the structure
of the agreement, it is evident the agreement was to be
in money. This seems in the nature of liquidated
damages. In such a case the Court will not decree a spe-
cific performance, nor enjoin the party not to plough.
But if the lessee covenants that "I agree for myself
or not to plough meadow" at the close of the
agreement a penalty is annexed, here the Court will enjoin 2 H. R. 2228.
the party not to plough, & if he wants to plough on the
same principle it would relieve against the penalty.

Thus much of the nature of the difference he
draws a penalty properly so called & a sum in the
nature of ascertained damages. Whether the sum is one or
the other of these depends upon the construction of the
whole instrument. It must be seen & if good sense consulted.

Power of Chancery.

Mac 22.
Comp. 22.
Mac 24.
H. B. 20.
Lamer on H
25-6

Observed that at Ch there are actions now brought for a penal sum. The whole sum would be given. The Com Law knows nothing of chancery penalties. The penalty is usually double the sum due. It is easy then to ascertain the damages.

Mac 27.
In this state penalties have been chanceryed by Act of Law under the equity of a stat.

When a Ct of Equity takes cognizance of penalties, it frequently orders an issue of quantum damnum to be tried at Law, and decrees according to the verdict. In many cases, this is not necessary, but in many it is absolutely necessary, & generally for breach or non performance of conditions, or where the damages are in any degree presumptive. In this case the Chancellor never does, & indeed he cannot assess the damages.

I have been considering the cases where Ch will decree the specific performance of contracts, but a Ct of Equity exercises the power of setting aside agreements in certain cases. I want to have observed that when Ch sets aside an agreement the relief is specific. At Law where a contract has been minutely obtained, after the Act has enforced the contract, it will give the party damages. But Ch will set it aside & therefore the relief is specific.

Suppose a bond is fraudulently obtained from a person. There is a Ct of Law which does not vitiate it, but a recovery may be had on it. Yet a Ct of Law will give damages for the deceit practiced. But an Ch in equity will give to prevent an action on that bond. The remedy in this case is superior.

Powers of Chancery.

It does not follow however from a Bill of the 3rd kind
 tending to decree a specific performance, that the Ct
 will grant relief against the same contract. As if a
 plaintiff under the same presents a Bill for a specific
 performance & it is dismissed, it does not follow
 that by a Bill may have this agreement set aside. At
 Law it is not so the contract is enforced or destroyed
 always upon a judgment upon the merits. It cannot be
 here so interdicted. Now at Ch. it is discretionary with
 the Chancellor to interdict or not.

There are many cases where Ch. stands neutral.
 Thus if upon a Bill for the specific performance
 of an agreement, it appears to the Ct to be unreason-
 able on the part of the plaintiff, it will never decree
 a specific performance, altho' it is not attended with
 fraud. And tho' they will not decree they cannot set
 aside the agreement.

2 Nov 143.
 225.
 18 Ch 20

There are many more cases where it will re-
 fuse to decree specific performance, than there are when
 it will set aside the agreement.

Fraud in obtaining the contract, is a good
 ground for setting it aside. And unreasonableness, tho'
 it will not set it aside, yet is oftentimes evidence
 of fraud. It is now every species of fraud will not set
 aside a contract.

2 Nov. 145.
 2 R. Mass 203.
 356.
 2 R. 322.
 2 R. 627

Even in the case of executory contracts by pa-
 rty, a Ct of Law cannot refuse to carry them into
 execution, by reason of fraud in the consideration.

As if the gift of a good of A by reason of B's

Powers of Chancery.

misrepresentation, gives him more than their true value when an actor for the price of those goods, it will be so held by a court, that misrepresentation was used.

It will relieve against other contracts besides fraud contracts.

There is a general rule that it will relieve against contracts gained by imputed hardship or a surprise, but there is no fraud or deceit in the case. But the mortgage & mortgagee agree that if the interest is not paid in such a time as semi-annually, the interest shall be added to the principal. It will relieve against it.

2 Dec. 182.
30. Wms 294.
1 P. Wms 727.

But if such an agreement as this is made between mortgagor & mortgagee, and it is otherwise fully satisfied by the mortgagor, to know his the extent of his rights that he can be relieved against it, it will not be set aside. The agreement is not void, but only voidable in equity.

In a Ct of Law a contract gained by any degree of coercion not amounting to duress is good, but in a Ct of Ch any degree of duress coercion, so as to excite the fear of one of the parties, & cause him to act under the impulse of that fear, if it does not amount to duress will set aside the agreement.

A portion of a Ct of Ch will relieve against a contract, which if oppressive is also unlawful as every immoral contract is. There are two grounds for relieving - that is, duress & hardship.

But the rule is different as to immoral contracts, where both parties are equally guilty.

The

Towers of Shancery.

The maxim is "volenti non fit injuria": The Ct of Ch^l sits under no such case. i.e. This Ct will go no further than a lot of Law would go. As in the case of Gambling. Both parties are here in the wrong, but in the case of an unwarlike contract, but one party is cum viat the lender. The Law does not deem the borrower guilty. Cous. 200.
2d. 11. 180.

And in general any unfair practice on the part of the plaintiff to the disadvantage of the defendant, will prevent a decree in his favor. The plaintiff must come into it with clean hands. 5th. 382.
Cous. 22.
2d. 9.

Thus where there is a misrepresentation as to the value of the subject of the contract, the Ct will not enforce it, but on the other hand will set it aside.

And a suppression of a material truth to the disadvantage of one of the parties, forms a strong objection to a decree in favor of the other party, as also the suggestion of falsehood "Supplicatio veri et suggestio falsi" stand on the same ground.

As where A wished to sell his land, B wished to buy it. It represented to B that it yielded 200 rent, which was true. But the land required an annual repair which was not told to B, & as B had no means of knowing it, B required to decree a specific performance. 17th. 440
11th. 539.
5th. 553.

The cases of this kind are where the plaintiff has brought a bill for specific relief performance. But I should suppose that if a bill were brought to set the contract aside it could be granted.

So also in some cases where the parties act under a mere misrepresentation or misconception

Powers of Chancery.

without any fraud or misrepresentation on either side, Ch^{cy} will not only not decree a specific performance, but it will set aside the contract on a bill brought for that purpose.

As where an agent to sell an estate sold it at a less value by a mistake in the quantity of interest. It was a freehold & it was sold as a leasehold. The rule however upon the subject, is if the fact misre-
presented is the cause of the agreement, it will be set
203 Mr Pl 326. aside, but if it is such a mistake as would not
240 Mr 225. have prevented the contract from being made as it
1 Mr 200. was made, it will not be set aside.

There is another case which is a very strong and singular one. It appears to me that here the mis-
representation arose from an ^{assurance} ~~misstatement~~ of the law
& in such a case Ch^{cy} will not interfere, generally.

The case is this— One of four brothers died leaving a fee simple estate. The elder brother claimed the es-
tate as belonging to him, & the youngest claimed
it as belonging to him. They agreed to leave it to a
school-master, who having read in a book that
inheritance always descended, gave his opinion
in favor of the youngest brother. In consequence of
which the elder brother entered into an agreement to
divide the estate with him. Afterw^d being better
advised he brought a bill in Ch^{cy} to be relieved,
and relief was granted. This is contrary to the ge-
neral rule both in Law and Equity, for if an agree-
ment is written different from what was in-
tended

Presely 307
2 Nov 1796.

Powers of Chancery.

tended by the parties relief may be had ^{as} it is in Equity. But if there is a misconception in Law, relief cannot be had.

Again it is a general rule that a Ct of Equity will not enforce a voluntary agreement. Such as are ^{1 How 54.} ^{2 D 242.} ^{1 Atk 10.} is not binding at Law. The interference of Ch^y is for the purpose of giving more adequate relief, than a Ct of Law could do. But in this case a Ct of Law could give no relief, therefore Ch^y will not give any.

But it is a general tho' not universal rule, that Ch^y will not decree where Law will give no relief.

But the compromise of a doubtful right is a sufficient consideration to support an agreement, & where there is such a consideration, the agreement is never considered as voluntary. ^{1 Atk 10.} ^{2 B. 200.} ^{1 B. 122.}

Thus if an agreement is entered into between two persons to settle the boundaries of their lands, Ch^y will decree a specific performance. This was the case in *Le. Haultin v. 2 Bro. Pears.* But there is no agreement to convey lands or pay money, & it would seem as if the agreement were voluntary. This case may perhaps strike the mind as being analogous to the case of the schoolmaster. But still these two cases stand on different grounds. A mistake in Law is different from the compromise of a doubtful right, for in the latter case it may not be a matter of Law, but a matter of fact which is doubtful; & if it were a matter of Law still it would stand on different grounds. In the

case

Powers of Chancery.

care of the school master, the ground of the eldest
son's executing the contract was a mistake in Law.
But the ground in the case of a doubtful point
is wholly different.

It is a rule of Equity that agreements obtained
by coercion, not amounting to duress, may be set
aside. So if they are obtained by means of undue
influence they may be set aside.

Thus where upon a treaty of marriage
between A & B, B being a minor, & her guardian
not consenting to the marriage, unless the hus-
band would release ^{to} him the liability for the manage-
ment of the ward's estate. He did it & Ch^l set it
aside.

But mere filial fear, reverence, or respect is not
of itself a ground on which relief may be had. But
if this reverence should be made use of for the pur-
pose of obtaining the contract it would be set aside.

Intoxication is a party at the time of entering
into the contract is not a sufficient ground for set-
ting it aside, unless the party claiming benefit
under the agreement invokes the intoxication for
the purpose of obtaining the agreement. The ground
of which would then be the fraud used, and
not the intoxication.

And if one party should get the other intoxica-
ted and then make an agreement with him, altho'
it should be a fair one Ch^l will not enforce it, be-
cause he comes in without clear hands. And

14th Nov 118.

14th Nov 11.

14th Nov 1899.

14th Nov 1899.

14th Nov 19.

14th Nov 1901.

14th Nov 29.

Powers of Chancery.

I suppose Ch^l would set it aside for the ground of fraud.

Again — mere weakness of understanding, if the party be legally compos mentis is not per se a ground for setting aside the contract. The Com. Law cannot discriminate between the shades of intellect in men. The meaning in a Ct of Law is not whether one party has more understanding than another. The rule established by Law is that if he is legally compos mentis, his weakness of understanding shall not be the ground of relief. There must be some standard, else the decisions would be uncertain & vague.

30 Wms 149.
Haw. 30.

15

Yet want of understanding may be presumed from evidence of fraud; the only difference then between a contract made by this man & any other, is that in the former case Ch^l will give relief upon slighter evidence than in the latter.

It is interesting that agreement operating as a bar upon their persons are always set aside in a Ct of Equity. And this is one of the strongest grounds on which Ch^l will set aside contracts. And such an agreement is now void at Law.

Thus where in an agreement in contemplation of marriage, the father on one side agrees with the father on the other to settle £1000 if he will do the same. Now if there should be a clandestine agreement on the part of one of the parties to the marriage as the son, to release a debt to the father, that agreement is void, it is illegal, for it is a fraud on the other party.

2 Wms 165. 245.
30 Wms 88.
1 Wms 158.
Haw. 348.
2 Wms 345.
1 Wms 280.
2 Wms 155.
2 Wms 755.
1 Wms 155.
1 Wms 155.

Power of Chancery.

And where upon an agreement with a bankrupt, the creditors agreed to take ten shillings on the pound, and the bankrupt to induce some more idle creditors to agree to this consented to give them of more on the pound, this agreement was void at law. It was a fraud.

Contracts of this kind do not admit of a subsequent ratification. They are ab initio void, because if they could be ratified, they might impose a fraud upon third persons. When a fraud is practised by one party to an agreement on another the other may ratify the agreement if he chooses. Now a fraud imposed upon third persons in an agreement never can be ratified.

1 Cow. 191.
1 Vern 602.
295.
3 D. & W. 75.
1 Ro. 295.

There being a treaty of marriage depending, there was one objection on the part of the intended husband's relations, because the wife's portion was not large enough. It was agreed by her brother that he would execute to her a bond for £500. It was done, & she clandestinely gave an instrument, by which she agreed to deliver up the bond. In fact she gave a release. The bond had its effect the parties were married, afterwards the husband brought his bill to set aside the release and it was set aside.

On this principle marriage brokerage bonds &c. are void. These are such as where one party agrees to give the other such a sum, if he will procure a certain person to marry him. They are void because they lead to fraud and undue influence, & misrepresentation.

1 Vern 447.
1 Ro. 245.

Powers at Chancery.

Chancery should not interfere in such things, I believe at Law, they would be void.

Contracts with heirs apparent for their expectancies, are always set aside in a Ct of Ch. Formerly they would not set them aside, unless the terms of the contract were disadvantageous to the heir. But the rule is now altered. They are radically defective, and it makes no difference whether the heir apparent was an inf^t or not at the time of making the contract. This rule is founded on general policy. These contracts tend to lead to vice & dissipation. They render heirs independent of their ancestors, & excite rebellion against parents.

And after the death of the ancestor, if the heir should perform the contract by actually conveying his inheritance, Cts of Ch. will in many cases set it aside tho' not always.

And the rule is, if the original contract is shown to be fair, & it appears to be satisfied fully, & the heir has full knowledge that it might be set aside, the ratification will not be set aside. If the vice is will be.

And in general a Ct of Ch. will not enforce a contract to do any thing which would extend to oppression, extortion or immorality. The thing itself need not be immoral, if it amounts to immorality, it would not be enforced. And I should think upon a bill for that purpose it would be set aside. The case cited to

Powers of Chancery.

900.209
2 Law 250.

is establish the rule & now where the plaintiff wishes to enforce the contract, & the defendant would not enforce it. In the same case the contract also stipulates for an opinion in the law office, this was not enforced & the cause is tended to immolate, *discontinue*.

Thus far as the power of Ch^y to make a set off in contracts.

906.004.
2, P. M. 120.
o. S. M. 250.
Law. 50
2 P. M. 440.
do 55.

Ch^y exercises the power of decreeing a set off a thing unknown to the Com. Law, at Law the contract, are entire and distinct, as where A owes B \$1000 by note & B owes A \$500 by ^{simple} contract. Now in an action the A. B. sues at Ch^y pleads a set off of his debt of \$500 by note. By 2 rules of Ch^y, he can thus plead. Now Ch^y can decree a set off. These set offs are especially necessary where one of the parties are insolvent. Ch^y will not always however decree a set off.

It is however Ch^y is in the constant practice of decreeing set offs.

It is impossible for a lot of Law men and officers of Law to consider a set off as a discharge. They have not to consider whether the contract was made, whether it is a good one, & whether it has been discharged. Because the debt has a debt of the set off that is a payment & discharge of the plaintiff's debt.

Under our Stat Law on the subject of Ch^y proceedings, original proceedings in Equity are to be brought before the general assembly, where the claim demanded exceeds £1000. Between this sum & £100 I have taken notice of the proceedings,

Power of Chancery.

under £100 P. St. I believe there is no case brought before the P. St., where there was any objection that the sum was too large. Indeed the provisions in the act show that the general Assembly should have the cognizance of suits under £100 in the discretion of the Court.

In our Ch^y proceedings there is no appeal from one Ct to another, but a writ of Error will lie. In Eng there is no writ of error but an appeal.

Where the nature in question is doubtful but the allegio nature determines the jurisdiction.

Power of Chancery to issue injunctions

16 The nature of an injunction has not yet been examined. — An injunction is a prohibitory writ the object of which is to restrain a person from doing a thing which appears contrary to Equity and Conscience. 3 Bac. 142.

Injunctions are issued in a variety of cases. The most usual writ of injunction is that issued against a plaintiff to delay proceedings in some suit at Law, & this issue upon some equitable grounds not admitted to in a Ct of Law, or upon some grounds of which a Ct of Law cannot take notice.

As in the case of a penal bond which is sued at Law. The deft may bring a bill in Ch^y, praying that an injunction may issue to stay proceedings upon his paying principal interest & costs. 3 Bac. 143.

But the Court can issue no injunction in any criminal case whatever. The rights enforced in Ch^y 2.

1801 12.
2 Dec 17.

9 Nov 23.
1 Dec 29.
Method 24.
2 Dec 51.
1 Nov 57.

The wrongs redressed are civil rights & civil wrongs.
A Court of Equity may issue an injunction to stay
waste or to prevent from committing waste - as cutting
timber demolishing buildings &c. A Court of Law can
only give damages for committing waste, but Ch' may
give a preventative remedy. The damages given at
Law may be very inadequate. This injunction may
issue either in favor of the remainder men or be
dissolved.

9 Nov 22.
1 Dec 25.
2 Dec 94.
123.
Jan 17, 45.

Point an injunction to stay waste will issue
not only in these cases, where an action of waste, will
lie at Law. But in many others. At Law waste
is only for the immediate remainder men or
reversioner. The Ch' is more wide ranging, the injunction
may. The reason is, in the former case (if it is granted)
it does not prevent the remainder man from doing
all the intermediate remainder men, for he
is to receive the Land. But in the latter the Land is
not received the injunction is a preventative remedy.
It does not put the remainder men or reversioner
into possession.

2 Dec 51.
1 Dec 1800.

The injunction to stay waste, will issue in
Chancery, in case of a mortgage. A mortgagee in
possession can never be sued by the mortgagor in
an action of waste, for he may commit waste. But
in Ch' the mortgagee has only the equitable estate
& therefore he cannot commit waste. An injunction
will issue, to prevent him from committing waste. And it should
issue in the case of timber for example even if

Powers of Chancery,

if it were to be cut down & applied to the payment of the debt, it would be the foundation of an injunction; at any rate if not so applied, it will issue.

On the other hand an injunction will issue in favor of the mortgagee ^{vs} the mortgagor. An action will not lie at Com Law, because mortgagor is considered as tenant at will. Of course when he surrenders waste he determines his estate. He is then a trespasser ab initio of estate being gone. But Ch^l will issue this injunction, for the mortgagor has no right to diminish the pledge. There a remedy may be given at Law, by means of an action of ejectment, but that might be inadequate.

again — An injunction ^{vs} waste may issue ^{1 Vern 25.}
^{2 Do 498.}
against tenant for life without impeachment of waste ^{Amblen 109.}
as the case may be. At Com Law no act of waste ^{1 Shaw 49.}
would lie without impeachment of waste. ^{2 M. & L. 89.}

For cutting timber an injunction will not issue, it will issue only for great & antient wastes, as waste.

And in a case of this kind, if he has committed waste by demolishing or partly demolishing a building, Ch^l will decree a specific relief, for the injury done, by ordering him to repair the building. ^{2 Vern 398.}
^{M. & L. 484.}
^{Eq. Ca. 200.}

And an injunction may sometimes issue to stop waste ^{vs} him who has the inheritance at law. As a trustee. Now at Com Law this action lies only in favor of him who has the inheritance ^{vs} an ^{vs} who has an estate for life or years, ^{vs} the trustee has the inheritance, because the

certain

Powers of Chancery

certum que trust is not known at Law. He holds it in a mere equity. And not in a way that will order the trustee to perform the trust, or to convey the estate, or to stop waste, which prevents him from violating the trust.

2 Ves 21

1 Co. 221

2 Com 50

An action at Law will not be ag^t a tenant in fee after possibility of issue extinct. But it will in such case issue an injunction to stop waste. This man is in the same plight as tenant for years without impeachment of waste. If the waste is outrageous an injunction will issue.

9 Ves 452

1 Publ 24

1 All 250

1 Ves 452

Injunction may also issue to restrain a nuisance. And one is allowed to raise a building, which will obstruct ancient lights, an injunction will issue to prevent it. At Law where the building was raised damages might be given. The lights must be ancient or no remedy will be had either in Law or Equity. Ancient lights are those which exist beyond the memory of man. The right must be founded on prescription or the consent of the parties, or those under whom they claim.

It may here be observed that tho' the lights are not in fact as long as ancient within the term, yet where one has built, & his lights look upon another's land, & they have been enjoyed a considerable length of time, a jury will presume an agreement.

An injunction may issue to prevent one from building on another's ground.

Powers of Chancery.

Ch^y will not remove converse as a nuisance on the ground of injury or injunction. That which is at Law & a nuisance. 1 Mac 134
2 H. 139.
146.

On this ground an injunction will not issue to prevent one from building a jett house for this is not at Ch^y a nuisance.

A writ of injunction will not issue to stop common trespasses because damages given at Law are equivalent. Yet if they are continued for a length of time so as to become a nuisance an injunction will issue. That which is at its mere inception is a mere trespass may by continuance become a nuisance. An action will not lie at Law as for a nuisance, where it is a mere trespass. 5 H. 21.
2 Com 52.

17.

Where an unconscionable bargain or agreement is affected by injunction, and where the equity of the deft at Law, who is p^lff in the bill, arises out of the answer of the p^lff at Law, who is deft in the bill, an injunction will issue to stay the trial. 2 Ch. Ca 55.
75. 93.
8 Mac 174.

It also in cases where one judgment in a bill of Law is not bar to another between the same parties, & there have been several judgments all in favor of the same party & still brought Ch^y will issue an injunction to quiet the title of the prevailing party.

This is the case in action of Ejectment, where the nominal p^lff & deft may be called altered a thousand times. The names of the parties in the writ are different, one action is not a bar

Turners as attorney.
another in the same cause

12th Dec 288

11th Dec 288

It was once held that it could not
interfere in such a case, but the decision is reversed.

1 Dec 189.

2d Dec 282.

4 Dec 144.

There are also other cases where an injunctio
may issue to quiet a person in the possession of
his estate, as where he has a plain equitable title
& has been in possession for a long time.

An injunctio may issue except in cases
where it would prevent a multiplicity of suits, respect-
ing the same right. Where such suits are pre-
sumed a likely to happen, because one action can-
not settle the question, Ch^s will issue an injunc-
tion, and thus draw the question within its

Mitford 4.

164. 22. 8.

1 Dec 22

200. 250

11th 282.

2d 1th 482.

own jurisdiction, & settle it at once. As where there
are several tenants of a manor claiming the profits.
So where a multiplicity of suits is about to arise
respecting the boundaries of land Ch^s will unite
all the parties & settle the business at once.

And it was on a principle analogous to
this that the case of *Borlase v. Lymington* was
decided in our Ex^t 1808. where the Ex^t decided
that where there were more than two parties
in action & acc^t would not be ag^t one of
them, as it would lead to a multiplicity of suits.

So also our injunctio may issue pending
a controversy in the Ecclesiastical Ch^s between
two or more persons claiming to be Ex^{ec} of a
R^{ty}. It issues to restrain them from acting as
Ex^{ec}, until the issue be determined. There is

1 Ex^t 179

1 Dec 189.

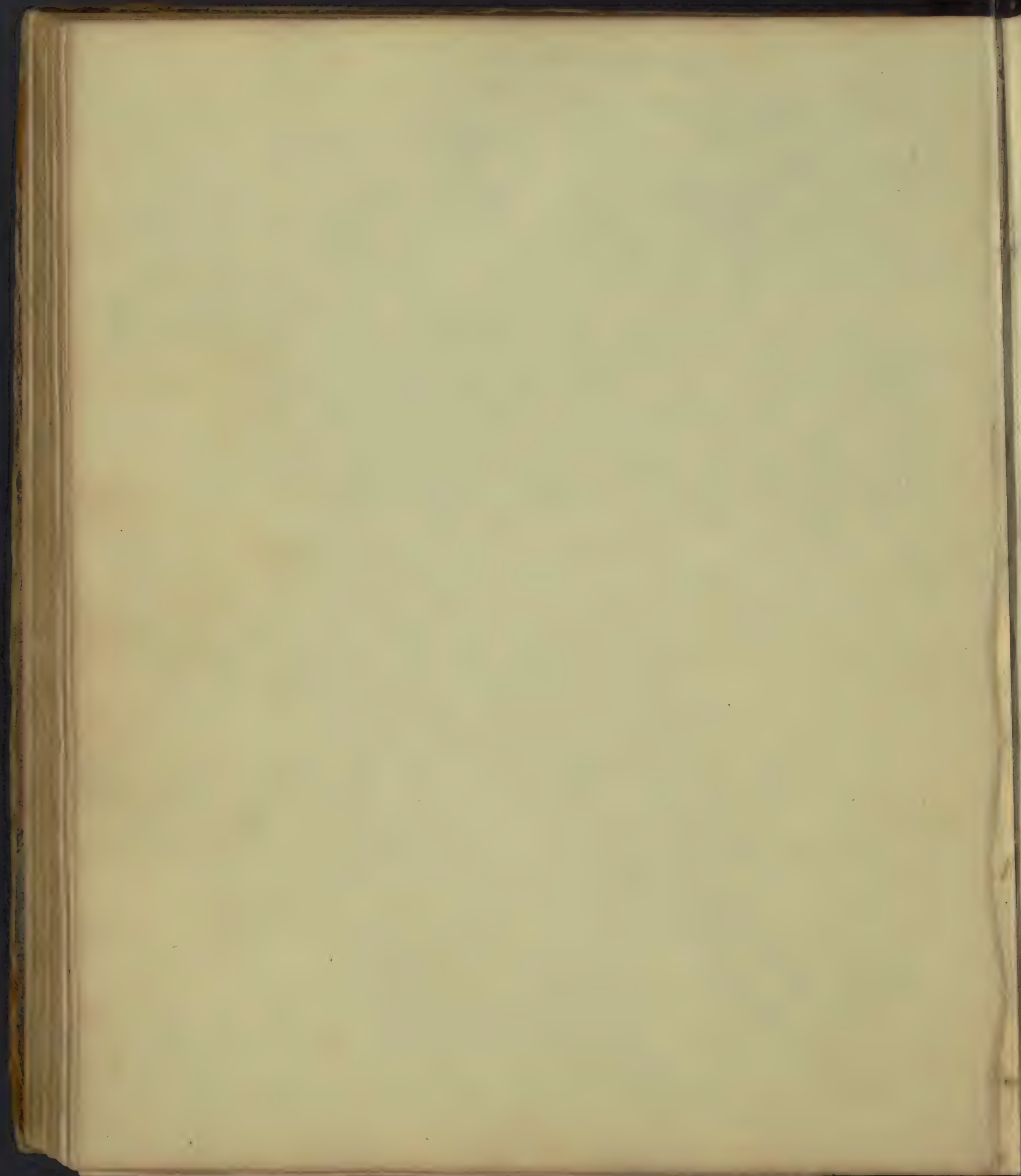
7th Dec 93.

Lowers of Plagiarism

no other way to prevent them.

An injunction may issue when one person pirates the literary property of another, it may issue in favor of authors or inventors to restrain others from publishing their works, or imitating their inventions, there has been a great question whether at Common Law there is an absolute right to literary property, & it was decided in *R. v. B. and L.* and *L. v. B.* the latter decided 5 to 5. The latter decided that the Common Law remedy took away that by statute. Lord Mansfield was among the 5, I therefore think the weight of authority is for the last decision.

[Handwritten signature]



recourse his understanding, and without any person
his heirs may determine, in the contract.

On the other hand, a contract made with
a non compos is alone in violation of his property, and
is not a valid one. Here is a distinction
which appears, in that the law does not suppose
that the absent requires, in ~~some~~ other cases. 1818
L. 1.

I will observe, as to the law, that a contract
made with an absent is not a valid one, and
is not a valid one. Even as to these however it appears
to be a rule of law that a non compos after a
certain time, his understanding cannot be used to his
advantage, and his estate. Because it is said
that no man of full age can stultify himself.
The truth is that the rule is founded on sup-
posed reasons of policy. But I do not think
that there are many good reasons for sup-
porting a man to say that he was insane, when
he made the contract, and indeed the authorities
on this point are contradictory. That must be
a matter that the court of authorities is in
favor of the rule. I believe that it has been
decided in our last case that he might make a will.

But in England the rule is the other way.
It has always been known that after his death
his heirs & executors may avoid the contract. I
think there is as much reason against it as there
is in favor of it. I believe that it has been
decided in our last case that he might make a will.

Publ. 1142.
The 1102
2d. 1142.
2d. 1142.
L. 123.
2d. 1142.
L. 1142.
L. 1142.

May 90.

1818-19.
L. 1142.
L. 1142.

Sports & Lunatics.

There are also two ^{insane} madmen, in which the con-
stant of any person may be avoided even during his
life.

1860
 1861
 1862
 1863
 1864
 1865
 1866
 1867
 1868
 1869
 1870
 1871
 1872
 1873
 1874
 1875
 1876
 1877
 1878
 1879
 1880
 1881
 1882
 1883
 1884
 1885
 1886
 1887
 1888
 1889
 1890
 1891
 1892
 1893
 1894
 1895
 1896
 1897
 1898
 1899
 1900
 1901
 1902
 1903
 1904
 1905
 1906
 1907
 1908
 1909
 1910
 1911
 1912
 1913
 1914
 1915
 1916
 1917
 1918
 1919
 1920
 1921
 1922
 1923
 1924
 1925
 1926
 1927
 1928
 1929
 1930
 1931
 1932
 1933
 1934
 1935
 1936
 1937
 1938
 1939
 1940
 1941
 1942
 1943
 1944
 1945
 1946
 1947
 1948
 1949
 1950
 1951
 1952
 1953
 1954
 1955
 1956
 1957
 1958
 1959
 1960
 1961
 1962
 1963
 1964
 1965
 1966
 1967
 1968
 1969
 1970
 1971
 1972
 1973
 1974
 1975
 1976
 1977
 1978
 1979
 1980
 1981
 1982
 1983
 1984
 1985
 1986
 1987
 1988
 1989
 1990
 1991
 1992
 1993
 1994
 1995
 1996
 1997
 1998
 1999
 2000
 2001
 2002
 2003
 2004
 2005
 2006
 2007
 2008
 2009
 2010
 2011
 2012
 2013
 2014
 2015
 2016
 2017
 2018
 2019
 2020
 2021
 2022
 2023
 2024
 2025
 2026
 2027
 2028
 2029
 2030
 2031
 2032
 2033
 2034
 2035
 2036
 2037
 2038
 2039
 2040
 2041
 2042
 2043
 2044
 2045
 2046
 2047
 2048
 2049
 2050
 2051
 2052
 2053
 2054
 2055
 2056
 2057
 2058
 2059
 2060
 2061
 2062
 2063
 2064
 2065
 2066
 2067
 2068
 2069
 2070
 2071
 2072
 2073
 2074
 2075
 2076
 2077
 2078
 2079
 2080
 2081
 2082
 2083
 2084
 2085
 2086
 2087
 2088
 2089
 2090
 2091
 2092
 2093
 2094
 2095
 2096
 2097
 2098
 2099
 2100
 2101
 2102
 2103
 2104
 2105
 2106
 2107
 2108
 2109
 2110
 2111
 2112
 2113
 2114
 2115
 2116
 2117
 2118
 2119
 2120
 2121
 2122
 2123
 2124
 2125
 2126
 2127
 2128
 2129
 2130
 2131
 2132
 2133
 2134
 2135
 2136
 2137
 2138
 2139
 2140
 2141
 2142
 2143
 2144
 2145
 2146
 2147
 2148
 2149
 2150
 2151
 2152
 2153
 2154
 2155
 2156
 2157
 2158
 2159
 2160
 2161
 2162
 2163
 2164
 2165
 2166
 2167
 2168
 2169
 2170
 2171
 2172
 2173
 2174
 2175
 2176
 2177
 2178
 2179
 2180
 2181
 2182
 2183
 2184
 2185
 2186
 2187
 2188
 2189
 2190
 2191
 2192
 2193
 2194
 2195
 2196
 2197
 2198
 2199
 2200
 2201
 2202
 2203
 2204
 2205
 2206
 2207
 2208
 2209
 2210
 2211
 2212
 2213
 2214
 2215
 2216
 2217
 2218
 2219
 2220
 2221
 2222
 2223
 2224
 2225
 2226
 2227
 2228
 2229
 2230
 2231
 2232
 2233
 2234
 2235
 2236
 2237
 2238
 2239
 2240
 2241
 2242
 2243
 2244
 2245
 2246
 2247
 2248
 2249
 2250
 2251
 2252
 2253
 2254
 2255
 2256
 2257
 2258
 2259
 2260
 2261
 2262
 2263
 2264
 2265
 2266
 2267
 2268
 2269
 2270
 2271
 2272
 2273
 2274
 2275
 2276
 2277
 2278
 2279
 2280
 2281
 2282
 2283
 2284
 2285
 2286
 2287
 2288
 2289
 2290
 2291
 2292
 2293
 2294
 2295
 2296
 2297
 2298
 2299
 2300
 2301
 2302
 2303
 2304
 2305
 2306
 2307
 2308
 2309
 2310
 2311
 2312
 2313
 2314

1st Upon which should be substituted according to
the terms of guarantee, may ~~also~~ "scire facias"
issue. The substitution ~~is~~ given, or made, in this
of such insane person.

Police Court, is a finding upon evidence, that
that the accused, wanted, was in the act of committing
the crime, and was in the act of committing the same.

2 Vols. 4th. One vol. is the album. general, or to the common.
 3 V. 100th. 100th. of the season. 100th. and it is said that
 3 V. 100th. 100th.

Sept. 29, 1899 The worst must not be a waste because of the
rule that he cannot suit himself. There is
one case however in which the worst was a dan-
gerous which we was in the that the rule
that he cannot suit himself admits of an exception.

As a suit in Equity is brought in behalf
of a venditor to compel the purchaser to perform
a contract made with him, while same, he must
of course be a party. Here he does not stand
himself, he will bring in evidence to prove
the contract was made.

15th Feb 1883.
10th Mar - 4.

But a transient make a contract is a loose
contract. He is bound by it but any other is
unbinding, and so his representations after
the death. The contract is loose in use
as well, and so not more binding, at the time of
the contract.

Ideals v Lunatics

Thus Ideals & Lunatics are both bound like other persons by acts or contracts of record, and such acts are not available to their heirs or assigns. The reason is that nothing can be asserted against the record, and not that the lunatic can make a contract.

2 B. 124.
10 B. 42
1 B. 243
1 B. 252

An Ideal is a natural fool, a person void of understanding from his nature, as said but one who has any understanding as if he can tell his age his name, &c. he is not an Ideal. But he is not an Ideal.

1 B. 252
1 B. 253
1 B. 254
1 B. 255

A Lunatic is one who has lost understanding, but who has lost it from some of such a nature.

2 B. 123
1 B. 254
1 B. 255

It appears then that the exemption of Lunatics from their contracts is want of capacity and not want of intent of that about which is necessary.

There has been much speculation here of drunkenness with exemption from obligation of his contracts. It appears to be settled that it is not a reason on which either in law or equity he can avoid his contracts. This rule is founded on principles of policy.

2 B. 121
1 B. 254
1 B. 255
2 B. 256

The opinions are not all agreed however that a man is to be treated as such.

But if one party surrenders to the other a state of intoxication, and then obtains the contract from him, it is void and not enforceable.

Contracts

Infants & Sane contracts

12.11.1

contract is less obligatory & free, and on that ground they will not be enforced

12.11.129
12.11.130
12.11.131
12.11.132

A person being of weak understanding is not of sufficient age to be bound in his contracts, because the degrees of understanding are infinite among men.

12.11.133
12.11.134
12.11.135

But in the case of any fraud or imposition, law will place in consideration of such weak men, & it will set it aside. And where a person of such weak understanding is party to a contract, if there is any circumstance which excites suspicion of a fraud, the law will relieve on the ground of imposition.

With regard to the power of infants, I will say down that infants are in the law considered in the same view as idiots & lunatics.

12.11.136

When the same general ground is the want of capacity, the contracts of infants are not binding except in necessities. And this except is founded in absolute necessity.

Infants stand in respect of law in the same view as the same ground as idiots & lunatics.

Sane & Sane

12.11.137

The contracts of sane persons are strict, and if a person is of legal capacity, and is not of legal age, his contracts are binding. The law is not concerned with the capacity of the human mind, but with the capacity of the human mind.

Contracts

Contracts binding their persons.

marries, and he is bound only during the cohabitation.

The reason that the husband and wife can bind the master is because he has all the dominion over the master holding it for him.

But the reason why the master may bind the servant is not that the servant owes him a duty, but that the master is bound to him, and that a bona fide purchaser shall not suffer, as the master was considered in the contract and must, the latter should not suffer rather than an honest man.

The reason why the heir is bound by the contract of his ancestor, is that the latter had the sole right of disposition, the heir having no voice, nor vote in the matter.

As to the wife, the rule is that the husband takes her estate, by marriage, and he takes her debt.

And if a tenant in tail agrees to alienate the inheritance, and the issue in tail will not be compellable to perform the agreement, the issue claim in common agrees, and the tenant in tail must stand doctored, the estate, y. & such lands come in, the heir cannot be deprived of his right.

But if upon such a contract, the issue agrees the performance, on which the contract was agreed to be made, the issue may be compellable to make the conveyance.

1 Lev. 218. y.
2 Nov. 200.
30th. 200.
2 in 8th. 278.
2 Nov. 154.

thru

Contracts

Binding third persons.

It is not however the agreement of the creditor which gives rise to the contract, but the latter's having taken advantage of the agreement.

Due an agreement by the tenant in fee to discharge of the creditor in respect to the estate, cannot be enforced against the heir, ^{22. 11. 1795} ^{18. 12. 1795} as it might have been made by the tenant himself.

His executor and administrators, are not thereby, included in his will, and included in ^{22. 11. 1795} ^{18. 12. 1795} his contracts, tho' they are not named. Due in his death must perform his contracts.

When an estate is sold as it is not necessary to require for the performance by his executor the being bound of course, to the extent of the debt.

This rule is not of universal application. There being some contracts of a fiduciary nature, with respect to which this rule does not apply. The common law alone is binding there.

An attorney being duly authorized may ^{22. 11. 1795} ^{18. 12. 1795} bind his client, as a kind of general agent, and ^{22. 11. 1795} ^{18. 12. 1795} authorized may bind his master ^{22. 11. 1795} ^{18. 12. 1795} in matters of business.

If a person having agreed to alien his land and die, before the conveyance is made, the survivor cannot be compelled to perform it.

For the survivor's claim in the whole estate is made to that of the party claiming under the agreement, and the latter is at liberty to sue the survivor, but it is said that if the agreement is made

Contracts.

How assent may be given
is a question of the nature of the act, but it is
true the maxim does not hold where a
given circumstance or circumstance there is conside-
rable circumstance surrounding the rule. It is not
recited that the rule is absorbed in the exception.

Does not understand the limits of this exception.

There are the principal cases in which
contracts are binding on third persons as well
as on the parties making them.

In what manner assent may be given
to contracts.

Assent to a contract may be either
express or implied.

It is implied assent is one that is not
in words but is implied by the act or it is said to
be implied.

And the assent to a contract may be made
in succession, subsequently, or concomitantly to the
principal subject act.

When a master gives a servant power
to make a contract he then is presumed

to give him power himself a purchase
of goods, a promise to pay for them, the assent is
concomitant.

16.11. This is if a servant makes a contract
without any authority from his master, and
the master afterwards ratifies that contract
it becomes his assent and obligation.

(1822-23-24-25-26)

How often may he give
 tacit or implied orders may arise in
 an army. Where there is an explicit order there
 can be no implied one.

The main defect is that whilst the
law gives a measure, it gives facts.

[illegible]

177. If a person in my presence has
without any authority from me, made a con-
fession in my name, and I remain silent, I should
understand, he wanted to be silent in such
case would it be silent.

Contracts

How absent may be invalidated.

Upon a sale of personal estate there is, unless
an implied warranty is indicated on the part of
the seller that the character and quality of
of the sale, unless the sale is properly one of legatum. —

What circumstances invalidate such a contract?

in some cases is no more or less well
insured. He is not given to a contract. If the mis- 1848. 229
take of one of the parties under her own right, is oc-
casioned by the fraud of the other, the contract
will not be binding as to him, because of fraud.

The bill is on a doubtful point at
night both parties being ignorant in which side
it lies, a contract is made, by which the party
with outbid is a loser the contract is good,
though it was made on the ground that the night
was doubtful, & thus knowing that one must lose
some with such a prospect.

And on the other hand, where the work is not doubtful, but the early author is ignorant of the extent of it, and has not the means of informing himself respecting it, he is not bound by the contract as the case now is.

But in a case, ^{where} the contract parties Landman
being deceased at the time of a third person. Landman
March 30, 2,
20, 1861
as to the right the contract was no longer in
existence. Now this was not like the case of Landman
possessing a doubtful title, where the parties knew
the right to be doubtful, and entered an account
account, and here with no such knowledge.

Contracts.

Allen.

2nd March 1858
Dear,

I have always found some sufficient ground in reasoning this case with the general principle that a mistake in law is no ground for invalidating a contract. And I think that case some what questionable.

182857
 182858
 28. 110.
 38. 110.
 48. 110.

Insurance contracts are generally binding
at 8'2, & not tho' the event upon which the
policy depends is not as itself contingent. It is
sufficient that the event be causally unknown.
I will explain.

1899
 1898
 1897
 1896
 1895

and I observe that women are not
where they insure the peace of their persons,
in the domestic sphere, a husband's existence,
or where they are able against domestic violence.

St. Louis, Mo.,

My dear Mr. Fair all wishes are made in
kindness.

There are cases in which the above rule
 becomes inapplicable to the erroneous
 circumstances of the contract, in which the, mistake, is not of the
 contract, but of the fact, and there are other
 cases in which the above is not the invari-
 able rule. There is, however, the rule of
 distinction is this, if the error or mistake affects
 that circumstance which affects the true
 nature of the contract, in the purchase,
 the contract is not binding on the purchaser,
 in the contract, and in the purchase,
 when the mistake is not of the contract,
 but of the fact, and in the purchase,
 the contract is binding on the purchaser.

1 Ves 200.
1 Vers. 52.
2 20 185.
1 20 186.
2 " 186.

Contracts

How spent may be ascertained.

But on the other hand if the mistake 1843.9
relates to a particular ~~part~~ which appears not
to have been a principal motive to the purchase,
the purchase is binding by the contract, and
his relief lies in compensation for the dif-
ference of value. Equity will enforce the contract.

But if upon an agreement to purchase 1844.10.10
the purchaser makes it an express condition
that the subject shall possess certain quali-
ties, the absence of them exonerates him, he is
not bound by the contract in such case.

But the intention of the parties as
to how spent may be inferred from circum-
stances and the words of it may be stated in
several ways. Thus if an article is sold as a slave
it is an article. The purchaser may set it at
a price far below what he would purchase it
for if made.

Now said it down as rule, that if 1844.10.10
an animal or horse is sold for a price which
he would not be worth unless he were, that
his words imply an intent of a kind, & the con-
tract would not be binding. I do not see how
that could ever have been introduced into the
book of Mr. B. for it is not law, and has
not even the authority of a single decision. 1844.10.10
I have it. For if an article is sold as a slave
then in fact it is not a slave, but the vendor
nevertheless is not bound by the contract if it is binding.

1844.10.10
Law 20
1844.10.10
2 East 714
1844.10.10
1844.10.10

Chlorophyll's or carotenoids.

2500 1/2

Contracts.

Subjects of Contracts.

When the same principle is applied to a grant of the title to which he has but an inchoate title; the intention to bestow upon the grantee a thing may be conveyed in an independent contract.

But a thing of which one is potential by the same may be demanded by a contract executed. By a thing of this sort is meant a thing that is accessory to another actually vested in the grantor or trustee. Thus one may grant the profits of his land, for they are accessory to the land which is vested in him. So one may make a grant of the future profits of any subject actually vested in him.

But on the other hand rights not vested either actually or potentially may be the subject of executed contracts. For when one transfers to another such stipulations, independent of the thing to be conveyed, they are not accessory to a conveyance, but such conveyance. For a person may contract to sell that which he may afterwards acquire. In all such cases there is a future act to be done to execute the contract, but where the contract is to operate immediately it can attach upon none other than an interest in present.

But like a conveyance of land, of which the person conveying is not the owner, does not convey the title, unless he has power such

42 B 242

Don 221

Don 441.2.

Threl 202.2.9

Robt 132.

18. 180. 7.

18 152.9.

2 B 4.2.

10234

Contracts.

Probable contracts.

1800-222 a deed. & afterwards purchase the subject, it has been decided in *Don't* that he is estopped by the deed from averring that he had no interest at the time of the conveyance.

Libel 122.

1 Inst 235.

2 Inst 295.

3 Inst 292.

I take the rule to be the same in all.

There is some obscurity about it in the *Eng* books. The same point has been determined in *Don't*.

It seems to be settled in *Eng* that a future contingent remainder or executory devise, being a freehold interest cannot be assigned, except by a fine or recovery. Now if a deed assigns it one can as well ask why should it not in the other. This exception has occasioned great obscurity as to the extent of the rule that a deed assigns as an estate. It is settled

that a deed will thus operate as to a lease.

For 1197, 29.

12 Inst 29.

2 Inst 29.

2 Inst 29.

2 Inst 29.

2 Inst 29.

2 Inst 29.

and also as to a mortgage. For in *Don't* on mortgage is estopped by his deed from saying that he had no interest at the time of making the lease or mortgage.

It is necessary in the subject of common law to first assume that an estate is assigned as to the whole or in part, & then to see if it is so. The first point is the name of the party at the contract.

Probable contracts.

12 Inst 29.

12 Inst 29.

12 Inst 29.

As to lease it is a rule of law, that no one can be assigned a mortgage created in a common

Contracts

Possible contracts

As if one entrusts to another an estate, not his own, the contract is unenforceable. Who it is is not liable for the party who agrees to convey, no doubt, and if he does not perform it, he is liable in damages.

With regard to these two clauses of the
 contract, in the former, it must be evident to both
 parties at the time of the contract that the per-
 formance is unattainable, so that neither can
 be expected or intend performance. But in
 the latter case it is very different; for it is
 by no means impossible that the contract should
 be performed. It is not naturally impossible that he
 should now purchase the estate & then convey it.

It has been holden that, where I agree
to deliver 1000 grains of corn, and on the next
morning, four shillings in money following, and so
on in Economical proportion, you shall succeed.
My standard, it has been holden that the counter
was better, for as I make the rate say something.

Contracts.

2 D. & H. 112.
Had 309
went

contracts as possible

to the wealth of a nation could not have con-
tained the performance.

These two cases were not void on the
ground of impossibility, the promisee was liable
to the promisee, not not to the extent of the
contract, upon what ground then are these
decisions founded? I conceive that the view
taken of these cases is incorrect. The books
say that the things are not absolutely im-
possible and therefore the contracts are void.
is, but the decisions themselves prove that
the promise was not binding. ^{not on account of impossibility} I
think the express promise was void, on account
of fraud, and the promisee is subjected on
an implied contract to pay for the value
of what he had received. This is the only
way I conceive that these decisions can be
reconciled with principle.

A contract is not void then on
account of impossibility, unless it be strictly
so. The distinction between a near & remote
impossibility is not regarded in executory con-
tracts. Hence a contract that I will sell
my lands upon M. if he die without issue,
tho the contingency is remote, it is not fatal
to the contract being valid.

One covenant, expressly and also
implied to perform a thing not impossible.

contracts

Lawful Contracts.

the nature of things, he will be liable on 3 Mar 1839
his covenant, tho' the performance was render- 10 Feb 200.
ed impossible by the act of God. The party in
such case is as if were an insurer against the risk.

Lawful Contracts. It is a rule of law
that the thing stipulated to be done must
not only be physically but morally possible 10. 104-5
which means lawful. No one can be bound
in law to do an act which the law prohib-
its. An unlawful contract is void.

A contract is said to be unlawful, 10. 10. 189.
when the agreement is to do something malum 10. 165-6.
an or malum prohibition, consequently
such contract is void. But a contract is still 17 Feb 213
or not void. As a promise to pay another if he 17 Hawk 88.
will be held or not is also void. 10. 105
10. 10. 189.

Contracts are also said to be against, Inst 206.
law, when they have for their object some-
thing which is not forbidden by ^{the law of} nature, or
forbidden by the law of the land.

But a contract is said to be void as 10. 10. 189.
against the law of the land, as being repugnant to 21 Mar 11.
the public welfare of the state, or against 27 Feb 17. 22.
some maxim or principle of the law or as 10. 10. 189.
against some particular law or statute 10. 10. 189.

Of contracts repugnant to the
Public Welfare.

All contracts which the law is repugnant to 10. 10. 189.

Contracts

211.
 212.
 292.
 203.

is different and, from trading in any place, ^{where} ~~where~~
 And the rule is the same as to all con-
 tracts, in general which militate against
 national policy.

211.
 212.
 292.
 203.

But as to contracts to construct roads
 the rule is that they are void, ^{if} ~~if~~ founded on the
 idea of them as a general restriction of trade
 over a limited time.

211.
 212.
 292.
 203.

But an agreement not to exercise a
 particular trade in a particular place, is bind-
 ing, for it may often be useful. It may be
 good, it is not of course void.

211.
 212.
 292.
 203.

But a contract of this latter kind
 is not binding, unless founded on sufficient
 consideration, and the onus probandi lies upon
 him who claims under the contract; the
 law on this case presumes against a suf-
 ficient consideration.

211.
 212.
 292.
 203.

And to make a contract unlawful
 and under those distinctions it is not necessary
 that the trade which he agrees not to pursue
 should be that of his profession.

211.
 212.
 292.
 203.

The rule stands upon the principle
 that no man ought to restrict himself from
 exercising a useful trade.

211.
 212.
 292.
 203.

Upon the same general principle a
 man's agreement for exclusive manumission
 is void.

Lawful Contracts.

Upon the same general principle a contract with an alien enemy is void. The law does not enquire whether it be advantageous to the enemy or not it makes them altogether void.

This rule does not extend to contracts with alien enemies who are permitted to remain in the country, and not treated as prisoners of war.

Upon the same ground an insurance upon the property of an alien enemy is void. For it promotes the commerce of the enemy and gives our own citizens an interest in the security of that commerce.

The rule that contracts with an alien enemy are void is not however universal. Thus sailors' contracts are in general obligatory, but this rule is one of the law of nations. And the master of a ship may by such a contract bind his crew as well as himself.

It is now determined however, that such contracts can be enforced only in a Court of Admiralty and not in the Court of Common Law.

And the rule is the same altho' the hostess given on such contract dies. The contract is still binding. It is also binding tho' the sailor is afterwards taken with the hostess.

And it may be said that a general rule that such contracts with an alien enemy

Contracts

Lawful Contracts.

100622.2.

arise out of a state of hostility, and tend to mitigate the evils of war and business.

These rules are all founded upon the Laws of Nations.

Upon the same principle it is that treaties, peace, capitulation, &c are binding.

{Marr. or. Inv.
(402.

Barren contracts in Eng. by the stat. 22 Geo. 3^d are prohibited to English Subjects, they may take but cannot give them.

How. H. Ca. 36.

1 Dobl. 245.

1 Burr. 472. 5.

Exp. Li. 184.

How. 411.

Marriage Brocage Contracts constitute another class of contracts which are void, as being repugnant to the public welfare. These covenants are those which are entered into to promote and procure marriages.

Of contracts opposed to a maxim ^{a principle} of Law

Contracts opposed to any maxim or principle.

100622.38

100622.38

100622.38

of Law are void. Hence if the consideration which is the cause of the promise, or the promise itself is opposed to any such maxim or principle the contract is unlawful and void. Thus a promise in consideration that the promisee should lawfully discharge a debt due to his master is void, the consideration being unlawful. So a promise for a valuable consideration by a slave that he would permit an owner to use him as a slave is unlawful. But the consideration here is good, but in the former case the promise per se is unlawful. In the latter case the promise per se is lawful, but the consideration is unlawful.

100622.38

100622.38

100622.38

100622.38

100622.38

100622.38

Laughful Contracts.

To a promise made by a man, who, at the time, is not an unlawful act, or a contract by another to indemnify him against all damages resulting from such an act are both void.

Howell says, it does, that when the unlawfulness of the ^{operation} is unknown to the promisee, the contract if one of indemnity is binding. This rule is laid down miserably. The rule is that where the fact which renders the contract unlawful, is unknown to the promisee, the contract is binding when it is binding. I brought Mr. C. to court over an unhappy accident, and told him that it was his duty to keep him. I being admitted it was a question, whether I was not liable over to him, and it was held that he was. For I was ignorant of the fact that it was not a good prisoner which rendered his detention unlawful. And on the same principle, if the sheriff in an execution directs the sheriff to take certain goods as belonging to the plaintiff, which is not a fact, and damages to be given by him, such promise is binding. The sheriff is liable to the owner, but he being ignorant of the fact which rendered the act unlawful, he can claim of the party on his promise of indemnity.

Butter 53

6 7572
1 How 173

We must here observe the distinction between ignorance as a fact and of the law.

Contracts.

Lawful Contracts.

These under then relate to the morality of a matter of fact.

Contracts militating against Morality and Decency.

12th 29.
22d 29. 182.

22d 29. 182.

22d 29. 182.

12th 29. 182.
184.

2d.

2d. 29. 182.

12th 29.

2d.

2d. 29.
184.

All contracts the object of which is

militate against morality and decency, are illegal void. The principle is a very plain one.

So also all contracts made for any corrupt purpose are illegal and of course void.

So a wager that is a mere colour for money is unlawful & void.

Upon the same principle it has been held that a wager as to the mode of playing an unlawful game is void, & it stands to promote the knowledge of that game.

But a wager between the plaintiff and defendant as to the issue of a cause is good at O.L. the one with the judge or arbitrator would be void.

In Court hall wagering contracts are void. I have some doubt whether any other than gaming wagers are prohibited by the phraseology of the Statute, tho' be it all wagers were prohibited I believe that such would be the event of decisions.

There is no doubt but that wagers are void at O.L. but all judges have regretted that the rule should exist.

Contracts.

Laughed Contracts

- Contracts in favor of third persons are
universally illegal and void. Thus where there
was an agreement between two parties in an ar-
rangement, a third person is benefited the agree-
ment is not void. But this rule applies to
all cases, such a contract is absolutely void,
they cannot be enforced in any thing except by

So when a marriage is made
there is a secret contract by one of the parties
to annul the marriage portion; it has
always been held illegal and void for it is
a fraud upon the other party.

When the same branch is an agree-
ment to pay one for attending an anchor, as a
reward, that will enhance the price by an
amount in the bid desired.

Contracts prohibited by statute.

Contract, prohibited by stat. Law are, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855,

Hence also an agreement by a bank dated Jan. 8, 1890
or any one in his behalf to pay money to a "B. 1890."
and for payment has been made, as above.

By all means this last contract would be
made as B² being a hand account the other
contract.

Contracts.

Lawful Contracts.

2. H. 12.
non 88.

Contracts are also illegal *animado*, where the object of them is the annihilation of some legal duty. A covenant therefore by a deputy not to perform certain duties is void.

1. 196.

But a contract which even tends to the encouragement of unlawful acts or omissions is unlawful & void. Thus a bond or covenant to a printer to save him harmless for any libel is as void as a bond given him to publish one, for it would render him more willing to do it.

1. 2. 120 B.
ser. 322. 118.
119.
2. 2. 353-4.
ser. 209.

Upon the same principle a contract to incur a fine for embossing a writ is void. So a contract to save one from being a committing a theft, felony, &c is void.

1. 197.

It also a wage between two persons that either of them or a third shall do an unlawful act is void, for it operates as an incitement to do such an act.

3. H. 1. 387.
1. 2. 337.
2. 2. 353-4.
1. 2. 399. 200.

There is a distinction taken between bonds taken for covenants, some of which are lawful and some void by statute, and similar bonds are some of the covenants are lawful & others void at Com. Law.

In the former case the whole bond or security is void. In the latter case the security is good as in the lawful covenants and void only as to those which are unlawful.

(Contracts)

Lawful Contracts.

Now this distinction arises I conceive
merely from the letter of the stat law which
declares the bond, the covenant &c (and thus in
construction, meaning the whole bond, &c) to be void.

It does not depend upon the difference of
effect in point of law between stat and C.L. but on the
phrasing of the act. Thus if an illegal contract creates
no right, yet after it has been executed, the law
in some instances refuses it to prevent. The
law in such cases does not enforce the con-
tract, but releases it's aid to either party to
rescind it. And this is done not because the
law forbids the debt more than the C.L.,
but because, the plff must derive justice from a
true fountain. This rule is not universal. Palmer
Lest, that where the illegality is of such a
kind as to render both parties criminal, if the
contract is executed the party who has paid
money for it cannot recover it back he is in
pari delicto.

But on the other hand, while the
contract remains unexecuted, if he who has
paid money upon the unlawful consideration
may recover it back.

As to the correctness of this distinction
in principle I entertain strong doubts. It has
always appeared to me most reasonable to
allow a recover, in both cases or neither.

Dang 481.408.
1842 202-7.
Hul. 10. 152.
Falk. 22.
2 Burr. 1812.
Camp. 790.
1752 8. 298.
3 D. N. 578.

(Contracts)

Lawyer Contracts.

722.235

For if the money cannot be recovered and the act committed, it is a strong inducement to the person who has received it to commit an unlawful act.

22.235

If money deposited upon an illegal contract is paid over to the winner with the loser's consent, is not recoverable back, - the contract is here considered as executed.

572.235
3 Carr. 222

But if money thus deposited has not been paid over, either party may recover from the stakeholder the part deposited by him, even tho' the wager has been decided. Then the contract is executory, for the money must be returned if paid and not at all, the winner has a right to an action for it.

122.235
2 N. 209.
2 Wils. 569.
2 M. & C. 1372.
1 B. & C. 64.
122.235
3 Carr. 222.

Suppose however that the stakeholder has paid over the whole amount to the winner, after the wager is decided, a wager being prohibited in the law. This I think a good great rule to discharge.

10 202.200-7
Dow. 341

It has been decided that money paid for the purchase of an office is recoverable while the office is vacant, but not afterwards.

The rule is the same as to a person who paid an illegal insurance before and after the risk runs.

I think this distinction as before a reward was given, is standing in recovery as in case to have the same effect.

Contracts.

Lawful Contracts.

There are other cases in which after an illegal contract is executed, he who has paid money may recover it back.

And the rule as to these is, that where the party who has paid the money, is not a volunteer, is not guilty of fraud, he may recover it.

This rule applies to all cases in which the law renders contracts void, for the security of the person paying the money. This is the case where money has been paid on an unenforceable contract. Where the person who pays money is intended to be protected, and money is lent to him, or an indenture is made, a promisor for all that has been paid above the principal & legal interest may recover it back. Bart. 391.
Long. 451.
Sh. 915.
4th B. 551.
Houl. N. P. 132.
18th B. 65.
Sabb 42.

The rule is the same where money has been paid for a bankrupt to a creditor, to sign a certificate, or a contract to pay is void, and the bankrupt, though a party to the contract, is deemed not to be in fault. 1 B. 203

A security given on a promise made in consequence of a transaction prohibited by positive law is not of course void. Thus if two persons are concerned in an illegal commerce, and meet with losses, which are paid by one of the latter, either from the other a security to pay his part, such security is held valid. 2 B. 530.
4th B. 256.
2 B. 211.
2 B. 211.
3 B. 424.
6th B. 455.
2 B. 211.

Any contract to carry it to effect, must be carried out.

Contracts

Indol Contracts.

2 P. A. 418

And it has been also determined, ^{holding} that if one party has said the whole with the promise & consent of the other, that the latter is liable on an implied contract for his proportion, even tho there were no express promise or contract.

2 P. A. 379

6 P. A. 61. 405

7 P. A. 630.

2 P. A. 372-3.

2 P. A. 372-3.

2 P. A. 372-3.

This doctrine is now much shaken, and appears to me to be virtually overruled. This certainly gains more force.

2 P. A. 379.

2 P. A. 379.

2 P. A. 379.

2 P. A. 379.

And it is decided that if one of the parties pay the whole top, without the promise & consent of the other, that he can not recover of the other his proportion.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

1 P. A. 196.

If a person makes a contract, the making of which is rendered criminal by positive law, he may be bound by it, tho he can not claim under it. Thus by the stat 21 H 8, it is rendered criminal for a clergyman to enter into trade, but if he should enter into trade, he should make a contract in prosecution thereof, he would be bound by it. For he is criminal & the other is not. If he could avoid it he would evidently gain an advantage by his incapability.

1 P. A.

So also if one trades only in the unprofitable trade, he is a trader, as to the bankrupt. But he is a trader as to more than one trade. The acquisition of wealth.

Contracts

Certainty of Contracts.

If the object of a contract is perfectly
uncertain the contract is void. The law will not
enforce it. As if a man
should enter into a contract not to work for
a month, I should think that that
would be void as being unreasonable in secur-
ity and was unenforceable.

A contract which was to be affected
the name or interest of their persons is void.
This is the law. As if a man had a contract
with a woman that he should have a son.
If he died before the contract is void.
Cont. 4. 29.
32. H. 599.

This rule will include a great vari-
ety of possible cases.

Contracts must be certain.

The certainty of a contract respects the
terms of it.

A contract altogether uncertain is void.

Thus if I promise to deliver goods in return
for money for them in a short time,
it is enforceable. But if I promise to deliver
goods in return for money for them in a
short time, it is enforceable. But if I promise
to deliver goods in return for money for them
in a short time, it is enforceable. But if I
promise to deliver goods in return for money
for them in a short time, it is enforceable.
1. Pollock 92-7.
2. 250.
3. 270.
4. 775.
5. 775.

Thus if I promise to deliver goods in return
for money for them in a short time, it is
enforceable. But if I promise to deliver goods
in return for money for them in a short time,
it is enforceable. But if I promise to deliver
goods in return for money for them in a short
time, it is enforceable. But if I promise to
deliver goods in return for money for them in
a short time, it is enforceable. But if I
promise to deliver goods in return for money
for them in a short time, it is enforceable.
* 10. 150
72. H. 124
427

Contracts

11. 50

Certainty of Contracts. Nature & kinds.
 immediately. If one promise to do a collateral act, without any time specified, he has his whole life to perform it.

2d Pl 143.

11. 51.

2d Pl 240.

11. 52.

But it is a maxim of Law, that "that is certain which can be rendered so." In

certum est, quod certum accipi potest. Thus it is a promise to pay for a barrel of wheat, or a promise to pay the market price.

So if I promise to repay to A all the money that he shall lay out for me in a month the promise is certain.

Thus far of the subjects of Contracts. Of the Nature & Kinds of Contracts.

2d Pl 443.

all contracts known to the Law of England are now, one executed or executory.

A contract is said to be executed, when the parties transfer property to each other together with immediate possession, or with a right of future possession depending on an event which is certain, without either party's trusting the other.

2d Pl 443.

11. 589.

2d Pl 443.

Thus if goods are bought, paid for & delivered, this exemplifies the first branch of the rule.

Thus also of the second branch, one having lands under lease sells it to another, possession is then the lease shall have determined.

Execution contracts, as the other have are those, which are made upon a

Nature & Kinds of Contracts.

are or relating to an exchange or transfer.

As to a contract to exchange horses in a week. Or if an agreement is made, to ^{29 Nov 18} make a lease, grant, or mortgage, tomorrow, ^{10. 231.} it is executory. Here no right is transferred as the parties trust each other.

A contract is executed, when one ^{10. 234} party performs and the other is trusted, or when neither party performs, but both are trusted.

All contracts according to the law are either express or implied, or as ^{10. 235} they are implied. But the general division is into express and implied. But as Powell is ^{10. 236} a strong authority I shall adopt his division.

The former relates to the structure or nature of the contract, the latter relates to the time.

An express contract is one, in which the parties stipulate in express terms, what is to be done or omitted.

A constructive contract is one, in ^{10. 238.} which the law is expanding the agreement ^{10. 239.} ^{Hayden. 14.} ^{10. 240.} ^{10. 241.} ^{10. 242.} ^{10. 243.} ^{10. 244.} ^{10. 245.} ^{10. 246.} ^{10. 247.} ^{10. 248.} ^{10. 249.} ^{10. 250.} ^{10. 251.} ^{10. 252.} ^{10. 253.} ^{10. 254.} ^{10. 255.} ^{10. 256.} ^{10. 257.} ^{10. 258.} ^{10. 259.} ^{10. 260.} ^{10. 261.} ^{10. 262.} ^{10. 263.} ^{10. 264.} ^{10. 265.} ^{10. 266.} ^{10. 267.} ^{10. 268.} ^{10. 269.} ^{10. 270.} ^{10. 271.} ^{10. 272.} ^{10. 273.} ^{10. 274.} ^{10. 275.} ^{10. 276.} ^{10. 277.} ^{10. 278.} ^{10. 279.} ^{10. 280.} ^{10. 281.} ^{10. 282.} ^{10. 283.} ^{10. 284.} ^{10. 285.} ^{10. 286.} ^{10. 287.} ^{10. 288.} ^{10. 289.} ^{10. 290.} ^{10. 291.} ^{10. 292.} ^{10. 293.} ^{10. 294.} ^{10. 295.} ^{10. 296.} ^{10. 297.} ^{10. 298.} ^{10. 299.} ^{10. 300.} ^{10. 301.} ^{10. 302.} ^{10. 303.} ^{10. 304.} ^{10. 305.} ^{10. 306.} ^{10. 307.} ^{10. 308.} ^{10. 309.} ^{10. 310.} ^{10. 311.} ^{10. 312.} ^{10. 313.} ^{10. 314.} ^{10. 315.} ^{10. 316.} ^{10. 317.} ^{10. 318.} ^{10. 319.} ^{10. 320.} ^{10. 321.} ^{10. 322.} ^{10. 323.} ^{10. 324.} ^{10. 325.} ^{10. 326.} ^{10. 327.} ^{10. 328.} ^{10. 329.} ^{10. 330.} ^{10. 331.} ^{10. 332.} ^{10. 333.} ^{10. 334.} ^{10. 335.} ^{10. 336.} ^{10. 337.} ^{10. 338.} ^{10. 339.} ^{10. 340.} ^{10. 341.} ^{10. 342.} ^{10. 343.} ^{10. 344.} ^{10. 345.} ^{10. 346.} ^{10. 347.} ^{10. 348.} ^{10. 349.} ^{10. 350.} ^{10. 351.} ^{10. 352.} ^{10. 353.} ^{10. 354.} ^{10. 355.} ^{10. 356.} ^{10. 357.} ^{10. 358.} ^{10. 359.} ^{10. 360.} ^{10. 361.} ^{10. 362.} ^{10. 363.} ^{10. 364.} ^{10. 365.} ^{10. 366.} ^{10. 367.} ^{10. 368.} ^{10. 369.} ^{10. 370.} ^{10. 371.} ^{10. 372.} ^{10. 373.} ^{10. 374.} ^{10. 375.} ^{10. 376.} ^{10. 377.} ^{10. 378.} ^{10. 379.} ^{10. 380.} ^{10. 381.} ^{10. 382.} ^{10. 383.} ^{10. 384.} ^{10. 385.} ^{10. 386.} ^{10. 387.} ^{10. 388.} ^{10. 389.} ^{10. 390.} ^{10. 391.} ^{10. 392.} ^{10. 393.} ^{10. 394.} ^{10. 395.} ^{10. 396.} ^{10. 397.} ^{10. 398.} ^{10. 399.} ^{10. 400.} ^{10. 401.} ^{10. 402.} ^{10. 403.} ^{10. 404.} ^{10. 405.} ^{10. 406.} ^{10. 407.} ^{10. 408.} ^{10. 409.} ^{10. 410.} ^{10. 411.} ^{10. 412.} ^{10. 413.} ^{10. 414.} ^{10. 415.} ^{10. 416.} ^{10. 417.} ^{10. 418.} ^{10. 419.} ^{10. 420.} ^{10. 421.} ^{10. 422.} ^{10. 423.} ^{10. 424.} ^{10. 425.} ^{10. 426.} ^{10. 427.} ^{10. 428.} ^{10. 429.} ^{10. 430.} ^{10. 431.} ^{10. 432.} ^{10. 433.} ^{10. 434.} ^{10. 435.} ^{10. 436.} ^{10. 437.} ^{10. 438.} ^{10. 439.} ^{10. 440.} ^{10. 441.} ^{10. 442.} ^{10. 443.} ^{10. 444.} ^{10. 445.} ^{10. 446.} ^{10. 447.} ^{10. 448.} ^{10. 449.} ^{10. 450.} ^{10. 451.} ^{10. 452.} ^{10. 453.} ^{10. 454.} ^{10. 455.} ^{10. 456.} ^{10. 457.} ^{10. 458.} ^{10. 459.} ^{10. 460.} ^{10. 461.} ^{10. 462.} ^{10. 463.} ^{10. 464.} ^{10. 465.} ^{10. 466.} ^{10. 467.} ^{10. 468.} ^{10. 469.} ^{10. 470.} ^{10. 471.} ^{10. 472.} ^{10. 473.} ^{10. 474.} ^{10. 475.} ^{10. 476.} ^{10. 477.} ^{10. 478.} ^{10. 479.} ^{10. 480.} ^{10. 481.} ^{10. 482.} ^{10. 483.} ^{10. 484.} ^{10. 485.} ^{10. 486.} ^{10. 487.} ^{10. 488.} ^{10. 489.} ^{10. 490.} ^{10. 491.} ^{10. 492.} ^{10. 493.} ^{10. 494.} ^{10. 495.} ^{10. 496.} ^{10. 497.} ^{10. 498.} ^{10. 499.} ^{10. 500.} ^{10. 501.} ^{10. 502.} ^{10. 503.} ^{10. 504.} ^{10. 505.} ^{10. 506.} ^{10. 507.} ^{10. 508.} ^{10. 509.} ^{10. 510.} ^{10. 511.} ^{10. 512.} ^{10. 513.} ^{10. 514.} ^{10. 515.} ^{10. 516.} ^{10. 517.} ^{10. 518.} ^{10. 519.} ^{10. 520.} ^{10. 521.} ^{10. 522.} ^{10. 523.} ^{10. 524.} ^{10. 525.} ^{10. 526.} ^{10. 527.} ^{10. 528.} ^{10. 529.} ^{10. 530.} ^{10. 531.} ^{10. 532.} ^{10. 533.} ^{10. 534.} ^{10. 535.} ^{10. 536.} ^{10. 537.} ^{10. 538.} ^{10. 539.} ^{10. 540.} ^{10. 541.} ^{10. 542.} ^{10. 543.} ^{10. 544.} ^{10. 545.} ^{10. 546.} ^{10. 547.} ^{10. 548.} ^{10. 549.} ^{10. 550.} ^{10. 551.} ^{10. 552.} ^{10. 553.} ^{10. 554.} ^{10. 555.} ^{10. 556.} ^{10. 557.} ^{10. 558.} ^{10. 559.} ^{10. 560.} ^{10. 561.} ^{10. 562.} ^{10. 563.} ^{10. 564.} ^{10. 565.} ^{10. 566.} ^{10. 567.} ^{10. 568.} ^{10. 569.} ^{10. 570.} ^{10. 571.} ^{10. 572.} ^{10. 573.} ^{10. 574.} ^{10. 575.} ^{10. 576.} ^{10. 577.} ^{10. 578.} ^{10. 579.} ^{10. 580.} ^{10. 581.} ^{10. 582.} ^{10. 583.} ^{10. 584.} ^{10. 585.} ^{10. 586.} ^{10. 587.} ^{10. 588.} ^{10. 589.} ^{10. 590.} ^{10. 591.} ^{10. 592.} ^{10. 593.} ^{10. 594.} ^{10. 595.} ^{10. 596.} ^{10. 597.} ^{10. 598.} ^{10. 599.} ^{10. 600.} ^{10. 601.} ^{10. 602.} ^{10. 603.} ^{10. 604.} ^{10. 605.} ^{10. 606.} ^{10. 607.} ^{10. 608.} ^{10. 609.} ^{10. 610.} ^{10. 611.} ^{10. 612.} ^{10. 613.} ^{10. 614.} ^{10. 615.} ^{10. 616.} ^{10. 617.} ^{10. 618.} ^{10. 619.} ^{10. 620.} ^{10. 621.} ^{10. 622.} ^{10. 623.} ^{10. 624.} ^{10. 625.} ^{10. 626.} ^{10. 627.} ^{10. 628.} ^{10. 629.} ^{10. 630.} ^{10. 631.} ^{10. 632.} ^{10. 633.} ^{10. 634.} ^{10. 635.} ^{10. 636.} ^{10. 637.} ^{10. 638.} ^{10. 639.} ^{10. 640.} ^{10. 641.} ^{10. 642.} ^{10. 643.} ^{10. 644.} ^{10. 645.} ^{10. 646.} ^{10. 647.} ^{10. 648.} ^{10. 649.} ^{10. 650.} ^{10. 651.} ^{10. 652.} ^{10. 653.} ^{10. 654.} ^{10. 655.} ^{10. 656.} ^{10. 657.} ^{10. 658.} ^{10. 659.} ^{10. 660.} ^{10. 661.} ^{10. 662.} ^{10. 663.} ^{10. 664.} ^{10. 665.} ^{10. 666.} ^{10. 667.} ^{10. 668.} ^{10. 669.} ^{10. 670.} ^{10. 671.} ^{10. 672.} ^{10. 673.} ^{10. 674.} ^{10. 675.} ^{10. 676.} ^{10. 677.} ^{10. 678.} ^{10. 679.} ^{10. 680.} ^{10. 681.} ^{10. 682.} ^{10. 683.} ^{10. 684.} ^{10. 685.} ^{10. 686.} ^{10. 687.} ^{10. 688.} ^{10. 689.} ^{10. 690.} ^{10. 691.} ^{10. 692.} ^{10. 693.} ^{10. 694.} ^{10. 695.} ^{10. 696.} ^{10. 697.} ^{10. 698.} ^{10. 699.} ^{10. 700.} ^{10. 701.} ^{10. 702.} ^{10. 703.} ^{10. 704.} ^{10. 705.} ^{10. 706.} ^{10. 707.} ^{10. 708.} ^{10. 709.} ^{10. 710.} ^{10. 711.} ^{10. 712.} ^{10. 713.} ^{10. 714.} ^{10. 715.} ^{10. 716.} ^{10. 717.} ^{10. 718.} ^{10. 719.} ^{10. 720.} ^{10. 721.} ^{10. 722.} ^{10. 723.} ^{10. 724.} ^{10. 725.} ^{10. 726.} ^{10. 727.} ^{10. 728.} ^{10. 729.} ^{10. 730.} ^{10. 731.} ^{10. 732.} ^{10. 733.} ^{10. 734.} ^{10. 735.} ^{10. 736.} ^{10. 737.} ^{10. 738.} ^{10. 739.} ^{10. 740.} ^{10. 741.} ^{10. 742.} ^{10. 743.} ^{10. 744.} ^{10. 745.} ^{10. 746.} ^{10. 747.} ^{10. 748.} ^{10. 749.} ^{10. 750.} ^{10. 751.} ^{10. 752.} ^{10. 753.} ^{10. 754.} ^{10. 755.} ^{10. 756.} ^{10. 757.} ^{10. 758.} ^{10. 759.} ^{10. 760.} ^{10. 761.} ^{10. 762.} ^{10. 763.} ^{10. 764.} ^{10. 765.} ^{10. 766.} ^{10. 767.} ^{10. 768.} ^{10. 769.} ^{10. 770.} ^{10. 771.} ^{10. 772.} ^{10. 773.} ^{10. 774.} ^{10. 775.} ^{10. 776.} ^{10. 777.} ^{10. 778.} ^{10. 779.} ^{10. 780.} ^{10. 781.} ^{10. 782.} ^{10. 783.} ^{10. 784.} ^{10. 785.} ^{10. 786.} ^{10. 787.} ^{10. 788.} ^{10. 789.} ^{10. 790.} ^{10. 791.} ^{10. 792.} ^{10. 793.} ^{10. 794.} ^{10. 795.} ^{10. 796.} ^{10. 797.} ^{10. 798.} ^{10. 799.} ^{10. 800.} ^{10. 801.} ^{10. 802.} ^{10. 803.} ^{10. 804.} ^{10. 805.} ^{10. 806.} ^{10. 807.} ^{10. 808.} ^{10. 809.} ^{10. 810.} ^{10. 811.} ^{10. 812.} ^{10. 813.} ^{10. 814.} ^{10. 815.} ^{10. 816.} ^{10. 817.} ^{10. 818.} ^{10. 819.} ^{10. 820.} ^{10. 821.} ^{10. 822.} ^{10. 823.} ^{10. 824.} ^{10. 825.} ^{10. 826.} ^{10. 827.} ^{10. 828.} ^{10. 829.} ^{10. 830.} ^{10. 831.} ^{10. 832.} ^{10. 833.} ^{10. 834.} ^{10. 835.} ^{10. 836.} ^{10. 837.} ^{10. 838.} ^{10. 839.} ^{10. 840.} ^{10. 841.} ^{10. 842.} ^{10. 843.} ^{10. 844.} ^{10. 845.} ^{10. 846.} ^{10. 847.} ^{10. 848.} ^{10. 849.} ^{10. 850.} ^{10. 851.} ^{10. 852.} ^{10. 853.} ^{10. 854.} ^{10. 855.} ^{10. 856.} ^{10. 857.} ^{10. 858.} ^{10. 859.} ^{10. 860.} ^{10. 861.} ^{10. 862.} ^{10. 863.} ^{10. 864.} ^{10. 865.} ^{10. 866.} ^{10. 867.} ^{10. 868.} ^{10. 869.} ^{10. 870.} ^{10. 871.} ^{10. 872.} ^{10. 873.} ^{10. 874.} ^{10. 875.} ^{10. 876.} ^{10. 877.} ^{10. 878.} ^{10. 879.} ^{10. 880.} ^{10. 881.} ^{10. 882.} ^{10. 883.} ^{10. 884.} ^{10. 885.} ^{10. 886.} ^{10. 887.} ^{10. 888.} ^{10. 889.} ^{10. 890.} ^{10. 891.} ^{10. 892.} ^{10. 893.} ^{10. 894.} ^{10. 895.} ^{10. 896.} ^{10. 897.} ^{10. 898.} ^{10. 899.} ^{10. 900.} ^{10. 901.} ^{10. 902.} ^{10. 903.} ^{10. 904.} ^{10. 905.} ^{10. 906.} ^{10. 907.} ^{10. 908.} ^{10. 909.} ^{10. 910.} ^{10. 911.} ^{10. 912.} ^{10. 913.} ^{10. 914.} ^{10. 915.} ^{10. 916.} ^{10. 917.} ^{10. 918.} ^{10. 919.} ^{10. 920.} ^{10. 921.} ^{10. 922.} ^{10. 923.} ^{10. 924.} ^{10. 925.} ^{10. 926.} ^{10. 927.} ^{10. 928.} ^{10. 929.} ^{10. 930.} ^{10. 931.} ^{10. 932.} ^{10. 933.} ^{10. 934.} ^{10. 935.} ^{10. 936.} ^{10. 937.} ^{10. 938.} ^{10. 939.} ^{10. 940.} ^{10. 941.} ^{10. 942.} ^{10. 943.} ^{10. 944.} ^{10. 945.} ^{10. 946.} ^{10. 947.} ^{10. 948.} ^{10. 949.} ^{10. 950.} ^{10. 951.} ^{10. 952.} ^{10. 953.} ^{10. 954.} ^{10. 955.} ^{10. 956.} ^{10. 957.} ^{10. 958.} ^{10. 959.} ^{10. 960.} ^{10. 961.} ^{10. 962.} ^{10. 963.} ^{10. 964.} ^{10. 965.} ^{10. 966.} ^{10. 967.} ^{10. 968.} ^{10. 969.} ^{10. 970.} ^{10. 971.} ^{10. 972.} ^{10. 973.} ^{10. 974.} ^{10. 975.} ^{10. 976.} ^{10. 977.} ^{10. 978.} ^{10. 979.} ^{10. 980.} ^{10. 981.} ^{10. 982.} ^{10. 983.} ^{10. 984.} ^{10. 985.} ^{10. 986.} ^{10. 987.} ^{10. 988.} ^{10. 989.} ^{10. 990.} ^{10. 991.} ^{10. 992.} ^{10. 993.} ^{10. 994.} ^{10. 995.} ^{10. 996.} ^{10. 997.} ^{10. 998.} ^{10. 999.} ^{10. 1000.}

Contracts

Nature and kinds.

This division of constructive contracts is
more than a branch of express contracts,
for they are construed from the express words
of the contract. But an implied contract is
one construed from the state of facts.

2 B. & A. 552
1852

But a recital in a marriage agreement, that
a lease is made to pay to £100. does not make an
covenant on the part of it to pay it.

in the 607
B. & A. 552
1852

An exception in a deed in favour of a person
is a covenant. Thus if a lease is made to a person
of a farm excepting a portion of the close, the exception
is a covenant to the lessor that the close shall
not pass by the demise.

But such an exception is now held
not to amount to a covenant that the lessor
shall not disturb the lessee's possession, but
merely amounts to a covenant on the part of
the lessor that such a close shall not pass by
the lease. If he does disturb the lessee in the
possession of the close, he is liable as a trespasser
but not as his covenant. I think that it does
not in fact effect this covenant can have if
disturbance is not a breach of it.

But where the exception is of something
arising out of the thing demised, the exception
amounts to a covenant that the lessor
shall not disturb the lessee in the possession or
enjoyment of the thing thus excepted. Thus if
I make a lease to B. excepting a right of way

Contracts

Implied Contracts.

except, this condition amounts to a covenant on the part of the lessee that he will not remove the building or the right conveyed.

The reason of the distinction is not obscure. In the first case, the lessee is a stranger to the estate. But in the last case, the lessee has an interest in the thing leased, & the condition arises out of his interest, it is as if there was a grant of the lease of a right of way over his land.

Leas. 224.
Mac. 531.
Burr. 241.
Lack. 70.
11 Mod. 107.
Tow. 228 & 21.

In a reservation of ground in a lease under (c) amounts to a covenant on the part of the lessee that he will pay the rent. And the lessor may be said to have a covenant broken if he does not pay the rent.

Le Chir. 637.
The 40.
B. 9. 399.
Poth. 1403.
Kent. 10.

If an obligation is imposed, that the obligee wills that the obligation be void at a certain event, this undertaking is a good discharge, tho' the words are those of the obligee.

Leas. 246.
Tow. 224.

Implied Contracts.

Implied contracts are those which are neither expressed in terms, nor raised from construction from the terms, but are raised from out of the nature of the case. They differ from express contracts, then, in that they are implied, & from construction contracts, because they are not raised by construction from the words. They differ from the latter in that

Contract.

Absolute & Conditional Contracts.

11248-6. In the law implies a contract on the part of a man to pay the worth of the labor, and the man is at an uncertain moment, even the best man no obligation, or he will make to pay.

11249-5. If a laborer goes to the house of a laborer to take such and such as the law requires.

11250-250. If a laborer holds over without a provision from the laborer, the law implies a contract that the former shall be tenant from year to year.

11251-8. The contract is implied as well in equity as at law. Thus if a man purchases a horse before payment of the whole he becomes a bailee of the horse, charged with the value, and the purchase is a fraction of the purchase money.

11252-252. Contracts Absolute & Conditional. All contracts are absolute or conditional. An absolute contract is one in which a person binds himself absolutely, a conditional contract is one in which the obligation to either in part or altogether on some uncertain event on the laborer's part of which it is to be kept to be defeated, or enlarged, or abridged. Thus if it promises to pay a man out on condition that he returns from his or a certain day, the obligation is not till he returns but when it returns, it is a promise to pay, and is a contract.

Contract

relevant conditions. Conditional Contracts

If a promise is made to pay 100 pounds
on condition that he marry that such a day
if he perform the condition the promise becomes
absolute, if he fail it is discharged, so
that the obligation is in suspense until then.

It sells hereby to B an edition of Pub. 76.
in case of a certain event, B shall pay \$10, but
in another event \$5 the contract is condi-
tional as to the amount.

If it agrees to pay \$5 for land as much
as to finally pay it is worth, it's obligation is
suspended untill E's decision & then he is al-
ways bound to pay.

There are certain destination relations
unavoidable conditions, which are not,
about to be known.

The effect of unlawful conditions varies according to the nature of the contract & of the conditions. And it is necessary to observe some general rules,

4. If an unlawful condition is annexed to an executory contract, the contract is void ab initio. The rule applies equally to a condition. The condition is to be treated as a lawful act, it is a legal duty. So if it militate against public policy, it nullifies the whole. *See* *Wheat v. Wheat*, 10 W. 31. *See* *Wheat v. Wheat*, 10 W. 31. *See* *Wheat v. Wheat*, 10 W. 31.

Contracts

Conditional Contracts. Unlawful Condition.

But on the other hand, if an unlawful condition is annexed to a conveyance, or contract executed, the conveyance is good, and the condition alone is void. Thus if one make a conveyance with an condition that theoffee shall do an unlawful act, the gift is good, and the condition is alone void. Mr. Powell observes that in the latter case, that theoffee may be under no temptation to commit the offence the law secures to him the estate, without performance of the condition. This would apply equally to executory contracts, it does not appear to me for the same reason. It may be accounted for better in this way. In the case of executory contracts, we must observe that they have no effect at all in law, & the law will not interfere where they are unlawful, to carry them into effect. And on the other hand where the contract is executed, the law will not interfere to aid either party being in pari delicto. The law leaves the parties where it found them.

The rule as to contracts executed holds only in cases where parties are in pari delicto.

It will never be executed contracts with unlawful conditions. See the common

Contracts

Unlawful Conditions

Conditional Contracts

1st. - Bonds conditioned to defend marriage are void. The condition is unlawful. 4th Dec 1800
2nd Dec 1844
1st Dec 1850

So bonds given to restrain from giving evidence in Ct are illegal and void.

Bonds given for abstention from giving evidence are void, as tending to promote the same. Bonds given after the offence committed are void. 9th Dec 1800
1st Dec 1850
2nd Dec 1850
1st Dec 1850

2d. conditions illegal. The nature of the contract is void. Thus a feoffment in fee with a condition that the feoffee shall not alien is void, not condition being inconsistent with the estate. 1st Dec 1800
2nd Dec 1850
1st Dec 1850

3d. a feoffee in fee on condition that the feoffee shall not take the profits of the estate, the condition is void. But if in either of these cases the feoffee had given a bond that he would not alien, so it would be binding, as the would not alienation, because he would not alienate.

4th. Conditions possible or impossible. Conditions may be possible or impossible at performance.

A possible condition requires no explanation.

Impossible conditions must be considered in a legal sense. That is not as are impossible at the time, but the contract is made, and must be the

Contracts

Conditional Contracts. Possible & Impossible Condition.
possible at the time of making them, become
impossible afterwards.

1 Inst 206

1898.
10 Nov 268.
22 245.

Condition if a condition possible at the time of
making it, becomes afterwards impossible by the act of
God, - or by the act of the party granting the interest,
the contract is not void on the non-performance of
the condition. This is in case of a contract executed.

The reason of the rule I take to be this, the estate
being granted cannot be defeated (in case of a fee simple)
but not by the act of the grantor, and as the contract
does not become impossible by his act, he ought not
of course to suffer from non-compliance.

2 B. & C. 215.
10 B. 195.
3 Inst. 54.

2 B. & C. 239.

The rule is the same when the condition becomes
impossible of performance by the law as the fact.

If a fee simple is made with condition that the
grantee shall marry the grantor within a certain time,
and at the expiration of that time, the grantor marries
another person, the condition is not defeated by this act,
for the grantor by his own act makes it impossible
for the grantee to perform the condition.

1 B. & C. 190.
1 B. & C. 200.
7 B. & C. 234.
1 B. & C. 238.
2 B. & C. 122.
1 Inst. 405.

But if such condition is annexed to a contract spe-
cialty, and becomes subsequently impossible by the act of
God or the obligor is discharged & the obligee takes nothing.

This certainly depends on this simple ground. In
the former class of cases, the contract being executed, the
grant cannot be defeated but by the act of the gran-
tee. In the other kind in the latter class of cases, the
contract being executory, the law will not compel
a payment of the debt if the condition is not performed.

Contracts

Possible and impossible Consent Conditional Contracts
of the obligor. But when the condition becomes impossible
by the act of God, by law, or by the act of the obligee, the
obligor is not in fault, & ought not therefore to suffer.

But if the obligor or party bound by an execu-
tory contract do any act to discharge himself from
the obligation he will still be liable. For it is a first
principle of law that no man takes advantage of
his own wrong.

To illustrate these rules with respect to executory
contracts. First if the obligor promised to do an act
within a certain time, which can be done by him
alone; and he die within that time - then is the act
of God, and the obligation or condition is void.

On Clin 574.
8 B. 2
1 Inst 208.
2 N. H. 246.
1 Mass 266.
do 414. 420.
Salk 198

Secondly If A makes a feoffment to B on condition that
B marry C within a certain time, and before that time
B marries another person, he is discharged from the
condition by the act of the other party. And thirdly
if A partly binds himself by a condition to a contract
to do an act within a certain time, which before that
time becomes impossible, the party bound is freed
from the condition.

And in pursuance of the same principles if the
obligee either prevents or discharges with the obligor
the obligor is discharged. This does not depend on the
ground of impossibility.

2 Ha 688.
Dony. 264. 5. 7.
8 B. 2.
12 B. 2.
17 B. 533.
7 B. 332.
1 East 619.
1 East N. 54.

If a contract contains a clause making the
duty judge whether the condition is complied with or not,
this clause is void in law, as being against policy,
a condition will stand, & therefore highly improper. In

2 N. H. 208.

1. *Chloris*...

Conditional Contract. Land is poss. and in case
such case the judge is to decide whether the condition is
complied with.

2. If the act of a stranger is made necessary to complete a contract, and such act is refused by the person referred to, there is some dispute concerning the obligation of the vendor. The opinion is that in such case of refusal by a third person, the obligor is discharged, but to some extent, but whether a total or partial depends upon circumstances.

There is a case in H. B. where the condition was precedent, and it was decided that the condition was invalid.

If a bond is sometimes for the return and a
one of two things in the alternative and one of them
becomes impossible by the act of god it was immaterial
that the obligor would be discharged. For since the parties
the obligor might have chosen the one that has become
impossible. But it is now held that the obligor will
be bound to perform the other unless indeed the impossibility
in not performing the other, is occasioned by the act of
the obligor.

If the condition becomes partially impossible by the act of God, the obligor is released for what remains possible. This is admitted upon the doctrine of per. Thus if A enters into an obligation to make a house for B, and as that house has never been for so it is not a part of the house for B.

50. 200.
100. 400.
200. 800.
400. 1600.

56. 22
10 Nov 25.
Lack. 75.
11 20'8.
18 + 11 24'

Nov 28th.
 1. 209.
 2. 25.
 2. 25. 11. 25.
 2. 25. 11. 75.
 2. 25. 11. 150. 2
 " 163. 58. 5
 1. Nov. 423.
 2. 25.
 2. 25.

Contracts

Secondly — Conditions impossible at the time of making the Contract:

If a condition is impossible at the time or not in the contract, its operation depends upon its being precedent or subsequent.

A precedent condition is one which must be performed before the right devolves out of the grantor, & vests in the grantee. 2 Bl. 156.

A subsequent condition is one in which a right or estate already vested is to be defeated. 1 Inst. 205. 2 Bl. 156. 1 How. 266.

12. If a precedent condition is impossible at the time of making the contract no right can ever vest. No right can pass until the condition is performed, & as the condition is impossible, since it is impossible. And the rule must doubtless be the same, if the condition is impossible at the time of making the contract, but afterwards becomes impossible.

So also if a precedent condition is unlawful, the condition or conveyance is void; for tho' the condition may be physically possible, yet the law considers them as impossible which is contrary to that law. 2 Bl. 157.

But if a subsequent condition is impossible at the time of making the contract, it has no kind of effect. It is a mere nullity; the contract is indeed not conditional. 1 Inst. 205. 2 Bl. 156. 1 How. 266.

And the rule is the same if the contract were ~~express~~ executory.

Contracts

Stat. Frauds & Virginia

There is a direct contrariety between conditions precedent & subsequent which are impossible. In the first case the contract is absolutely void. But in the latter, the estate as in the mortgage already noted, it can never be defeated by the non-fulfilment of the condition.

In the case of a covenanted contract, if the condition impossible is incorporated with the body of the obligation, the whole obligation is void. The distinction between this and the above case never appears artificial, but the artificial there is a difference for its foundation. For in the latter case there is no condition in present, but there is in the former case.

Contracts or agreements require to be in writing.

There is a distinction between the C & L distinction between specialties & unenforced contracts.

2. There is a distinction between written and unwritten contracts. In Virginia, which distinguished from other states. The Statute is adopted in most of the States. The Statute was enacted in England and is a part of the Statute of the State.

There is a distinction between the Statute of Frauds, which is a part of the Statute of the State, and any other statute which is a part of the Statute of the State. There is a distinction between the Statute of Frauds, which is a part of the Statute of the State, and any other statute which is a part of the Statute of the State.

Contracts

That is, *Procurator Regius*
of the kind in writing, and in the name of the
in the name of the

The Statute includes but does not limit these things.
1st The Statute of Contracts, in any manner
expressed by an act or deed to answer or not
to answer, while in the name of the deceased.

2^d I promise by one person to answer for the
debts, defaults, or misdeeds of another.

3^d Promise or agreement in consideration of mar-
riage.

4th Contracts in sales of lands, tenements or hereditaments
in which any interest in or concerning them
the nature of the contract is, Sales, or contracts
for sales, it is immediately executed.

5th Promises not to be performed within one
year from the time of making them.

6th (In the Statute) Contracts for the sale of
goods, to the value of ten pounds or upwards.

As to the last clause, it has been explained, &c. &c. &c.
That it refers to all the execution contracts, &c. &c. &c.
as to contracts, to be immediately executed.

There is a clause in the Statute relating
to the fourth clause which is in an answer. The Statute is
The Statute is provided that all persons shall
shall execute all leases or tenements at will, or
at will for three years & upwards which are
made in the Statute.

By this all persons are enabled.

Contracts

Stat of Deeds & Perjuries.

The object of the stat is to prevent persons from proving perjury against a witness in a civil cause, because it was supposed that there was danger of fraud and perjury, & hence it debarred it & made.

I shall treat of the several kinds of promises in their order.

1st. Promises by an executor or administrator to pay the debts of the deceased out of his own estate.

No such promise is enforced by the stat. It shall be void unless in writing and signed by the executor or his authorized agent.

It is said however that if the executor or administrator has assets in his hands, & makes an assignment of them, the promise will be good, though not enforceable by the stat. notwithstanding.

The reason assigned in support of this rule is that by the executor having assets, the debts of the deceased become his own, & that as such he may promise to pay them.

This point however has never been judicially decided, and I must confess I could never see any just ground for it. But I think a later decision approves it. The rule I think to be incorrect for the reason assigned for it is not true. That is the executor does not transfer the debts of the deceased to the executor, but he is liable to the payment of the debts.

Contracts

Stat of Bonds & Mortgages

yet he is liable no farther. The stat says it proceeds upon the distinct nature of agreement with a will or without. It merely introduces a new mode of evidence, that is all. It is not intended that these various contracts which formerly might be proved by parol evidence or now require to be in writing which would still be the only evidence of their existence.

It was also decided that profit of the week's law 499 Harris of 1841 in his hands changed into general assignment. That decision is now law.

15

And again it has been held that the assignor's obligation to an arbitrator was binding that ^{5 Dec} 1841. He had a right in his hands. This too has been affirmed.

But if on such arbitration the arbitrator awards that the assignor or exec^r shall give a certain sum, he will be bound to the extent of the sum. For such award is tantamount to a finding of fact in the hands of the exec^r, and it is supposed that no such award would be made unless there were assets.

It was also determined that the payment of interest on a debt by an exec^r was considered as an acknowledgment that he had assets to the amount of the whole debt, and he was liable ^{stat. 8.} ^{Tol. 464} to the whole amount. This opinion is affirmed. But again it is no longer considered as an acknowledgment that he has assets to that amount.

107 of Hearts & Regiments

A consideration must be shown, for the above
the end is not to make the more likely to be
not promise before the end is all over when the
promise is in writing, but only when he can
be made liable on his personal promise before
the end. Hence, if a man's promise is
not good unless a consideration could be shown,
there is no further promise or not even
unless the consideration is shown.

It has been determined of late that the
location must appear in the morning. It is
less time determined in the afternoon.

Contracts

Stat of Bonds & Promises

and once in the Supreme Ct of the State. The decision is given
where it is carried on the merits of the case. ¹⁸⁵⁰
The 1st says that the obligation of ^{the contract}
both parties must make up the agreement.
The decision is on a double contract.

It has been determined in San that every one
who is a specially. If this is immensurable, but
it would be well to make the consideration
clear. The point is still undecided with us.

To take advantage however of this case
in the 1st of the 1st point says that except when
the promise was made. This case upon the death ^{of the}
of A. It applied to B who was entitled to a share ^{of the}
of the estate. A promised the latter that if he would
name the will of A that he would pay such a
sum. This was a partial promise, but was not
within the scope of the promise was made by
B as an individual before he was an executor.

In declaring as such a promise by the executor
it is not necessary to show that the executor had
acted. The promise is binding to him as
promise was made in the name of the executor.

2d Promises made by one person to another
in the 1st debt, debt or a mortgage of
a 1st person. If it is the equal to be in an
due one made by the party in his authorized
act.

It has been determined in what is a promise made
by one person to another, defendant's promise.

Contracts
Stat. of France & Germany

Ed. 18
 1844, 200
 1845, 200
 2 Aug. 1847

of another? As to this question we must observe the distinction. If the promise made in one person in the benefit of another is primary, the promise is in favor. But if it is collateral it is in disfavor. The original contract or promise is not made to answer for the debts of a third person. But the collateral promise is to answer for the debts of another. & therefore the first is not within the stat. the other is.

The most serious defect promises are original & not collateral. And in all cases where this is determined, there will be no difficulty in finding whether the promise is or is not within the stat.

Promises are said to be several in three different cases.

Bull. P.D. 281
 31 Dec. 1921
 2607
 1844, 200
 1845, 200
 1846, 200
 1847, 200
 1848, 200
 1849, 200
 1850, 200
 1851, 200
 1852, 200
 1853, 200
 1854, 200
 1855, 200
 1856, 200
 1857, 200
 1858, 200
 1859, 200
 1860, 200
 1861, 200
 1862, 200
 1863, 200
 1864, 200
 1865, 200
 1866, 200
 1867, 200
 1868, 200
 1869, 200
 1870, 200
 1871, 200
 1872, 200
 1873, 200
 1874, 200
 1875, 200
 1876, 200
 1877, 200
 1878, 200
 1879, 200
 1880, 200
 1881, 200
 1882, 200
 1883, 200
 1884, 200
 1885, 200
 1886, 200
 1887, 200
 1888, 200
 1889, 200
 1890, 200
 1891, 200
 1892, 200
 1893, 200
 1894, 200
 1895, 200
 1896, 200
 1897, 200
 1898, 200
 1899, 200
 1900, 200
 1901, 200
 1902, 200
 1903, 200
 1904, 200
 1905, 200
 1906, 200
 1907, 200
 1908, 200
 1909, 200
 1910, 200
 1911, 200
 1912, 200
 1913, 200
 1914, 200
 1915, 200
 1916, 200
 1917, 200
 1918, 200
 1919, 200
 1920, 200
 1921, 200
 1922, 200
 1923, 200
 1924, 200
 1925, 200
 1926, 200
 1927, 200
 1928, 200
 1929, 200
 1930, 200
 1931, 200
 1932, 200
 1933, 200
 1934, 200
 1935, 200
 1936, 200
 1937, 200
 1938, 200
 1939, 200
 1940, 200
 1941, 200
 1942, 200
 1943, 200
 1944, 200
 1945, 200
 1946, 200
 1947, 200
 1948, 200
 1949, 200
 1950, 200
 1951, 200
 1952, 200
 1953, 200
 1954, 200
 1955, 200
 1956, 200
 1957, 200
 1958, 200
 1959, 200
 1960, 200
 1961, 200
 1962, 200
 1963, 200
 1964, 200
 1965, 200
 1966, 200
 1967, 200
 1968, 200
 1969, 200
 1970, 200
 1971, 200
 1972, 200
 1973, 200
 1974, 200
 1975, 200
 1976, 200
 1977, 200
 1978, 200
 1979, 200
 1980, 200
 1981, 200
 1982, 200
 1983, 200
 1984, 200
 1985, 200
 1986, 200
 1987, 200
 1988, 200
 1989, 200
 1990, 200
 1991, 200
 1992, 200
 1993, 200
 1994, 200
 1995, 200
 1996, 200
 1997, 200
 1998, 200
 1999, 200
 2000, 200

1st When the person to whose benefit the promise is made is not liable to the promisee.

2^d When the person's liability for whose benefit the promise is made, is extinguished in consequence of the promisee's being made at the time when it is made.

3^d When there is a new & distinct consideration arising out of a new & distinct transaction, & moving to the promisee.

In the last case the debt of the third person is only the measure of what is to be paid for another subject.

1852

Major General & President

That in the other hand when the promise of the
benefit of a third person is merely made for the
third person & to procure an office for him. There is a
real interest & promise within the stat. In an other
words, when the promise is intended merely to proc-
ure an additional member to the franchise it is not
paternal, & therefore it has no effect is within the
stat.

the least
memorabilia

It is possible that is so, when the promise
has been made the promise is made in good
faith. But it says to deliver goods to B.
I will pay you for them. The promise is paid
yet this is not a good; and any word of
this in part are binding on it. — But if the
promise were in these words, "deliver goods to B.
and if he does not pay you I will," this promise is
collateral & not in writing. In law the
intent is that it shall be that first debt; &
this promise is made as an additional remedy,
I so promise to pay the debt of another.
In law case — I about to have some said is a
debt. "Deliver goods to me, and I will
see you paid" The promise was collateral.

22 Feb 1883.
P.B. 105. 120
Robert 200
Go 21

102. No. 100.
L. R. 100.
L. R. 100.
L. R. 100.

Lord Mansfield made a distinction, which I think was a
correct one, in the promise "Will you pay?" ¹⁷⁸⁸ ¹⁷⁸⁹
is made before the delivery of the goods, it is an
offer, but if afterwards it is a collateral promise in the
the contract, it is not a promise to pay. ¹⁷⁸⁸

2. 2. 8. 5. 1.
 2. 2. 2. 2. 2.
 2. 2. 2. 2. 2.
 2. 2. 2. 2. 2.
 2. 2. 2. 2. 2.
 2. 2. 2. 2. 2.

Contracts

It. of Frauds & Regurries.

The ground of the action is in the construction of the particular phrase. In the last case the Ct determined that they were at liberty to determine from the circumstances of the case, whether the promise was intended to create an original debt to be discharged by the promise, or whether it was intended as an additional consideration to the promise, & the future decision will I think be guided by the facts.

1831. 11. 23.
Robt. 21. 23.

29. 11. 80.
Robt. 21. 23.
Robt. 21. 23.
Exp. 21. 81. 2

Hobbs 2. 248.
20. 21.
21. 2.
L. 16. 25.
C. 248.
3. 21. 15.

When A applied to B to deliver goods to C, and said if you do not know I. I. you know me I will see you paid, the promise was held collateral. A promise by one that on consideration of your letting I. take a horse, that he shall redeliver it to him, is a collateral promise.

And it is a general rule that a promise that a third person shall do an act, and upon failure that it shall be done by the promisor is a collateral promise. But if the third person for whose benefit I make the promise must not be liable

Ld. 1085.
Robt. 22.

the promise is original. Thus if I promise to that I shall pay him a certain sum, and that if he does not pay, that the promisor will pay. The promise is original. This supposes that the promise is made without the privity of C, who cannot therefore be liable.

21. 17.
21. 21.

Now to make a promise collateral it is necessary that the party to whom it is made should not only be liable but also become liable.

Contracts

St of Bonds & Forfeitures

when the promise is made. — If a promise is made by one of several persons already liable it is not within the stat. Thus if one of several debtors promises to pay the whole debt, the promise is original — and the by part is not within the act in joint & several.

When according to these rules the promise is original, the common or general action of indent obligat is the proper action for the promisee is the original debtor.

On the other hand when the promise is collateral, the promisor is not liable on the common action of indent. ass., but the plaintiff must state the circumstances specially. 3 Lev. 209, 2 Ke. 1085, 1 Hen. 3, 3, Hobell

2^d. When the liability of the third person for whose benefit the promise is made is extinguished by that person's promise — the promise is original. Thus when A promises to pay to a debt due him by B provided B will then discharge B this promise is original.

The question is whether the promise discharges the debt of B. The promise is not an additional remedy. B is no longer liable. The truth is the debt of B is merely the rule of damages, which is to show the amount to which A's promise subjects him. The rule I think correct the two are opposite opinions.

When the promisor is the purchaser of the debt of another, the promise is not within the stat. it is original, & proper to be set out as promise to pay the due debt.

Promises

Promises & Perjuries.

3^d. Promises are original when there is a new consideration arising out of a new & distinct transaction & moving to the promisee. This was the case in the case of *William v. Gifford*. The case was that A a landlord entered upon the premises to receive the rent due. He

promised to pay the rent, if he would make his house on the goods. This promise was held to be original, the promise in this case is the price of the purchase of the house. It is so in the case says the promise is so in the case. The rest of the case is so in the case. This case has been so in the case.

Miscellaneous Rules.

A promise to pay a certain sum in consideration of the promisee withdrawing a suit against him for a tort is an original promise. There is no debt of tort, which is necessary to make the promise collateral. The default in marriage in the 2^d means a default in the payment of a debt but here there is certainly no such default.

Further to make a promise collateral there must exist a debt or duty of the third person. This debt must be ascertainable but in the above case the debt or duty cannot be ascertained. But a promise to pay a sum of money in consideration of the promisee withdrawing a suit against him for a tort, is collateral. The consideration must be

1. *W. v. Gifford*
2. *W. v. Gifford*
3. *W. v. Gifford*
4. *W. v. Gifford*
5. *W. v. Gifford*
6. *W. v. Gifford*
7. *W. v. Gifford*
8. *W. v. Gifford*
9. *W. v. Gifford*
10. *W. v. Gifford*

Contracts

Stat. on Contracts & Promises

make the promise original & good. — And a promise the 11th J. R 201.
in consideration of the withholding an action of law. 3rd Mar. 1887.
the promisor will pay the debt, has been held to 2nd Day 355.7
be within the stat. This decision however is some-
what questionable. 55.

If A is answer for a debt on mere promise,
& B promises to pay the debt this promise is collateral. 1st Mar. 422.
But if B were arrested on execution & B promises 1st Mar. 551.
to pay the debt in consideration of the discharge of A. 2nd Day 423.
the promise would be original.

15th It has been held in law that when there was a double 3rd Mar. 1887.
new consideration, tho' it did not arise from a new 2nd Day 355.7
transaction & tho' it did not move to the promisee, 2nd Day 355.7
the consideration was alone sufficient to take it 2nd Day 355.7
out of the stat. But even then, it would be 2nd Day 355.7
materially violating the stat. 467

A written promise to pay the debt of another
or if he does not pay it, is discharged by the dis-
charge of the promisee towards the original
debtor. Thus if A promises B to pay the debt of C. 1st Mar. 551.
if A does not pay it when it is to be paid,
& B when the time arrives tells him that he need
not pay it immediately, this discharge discharges
the promisee from his liability.

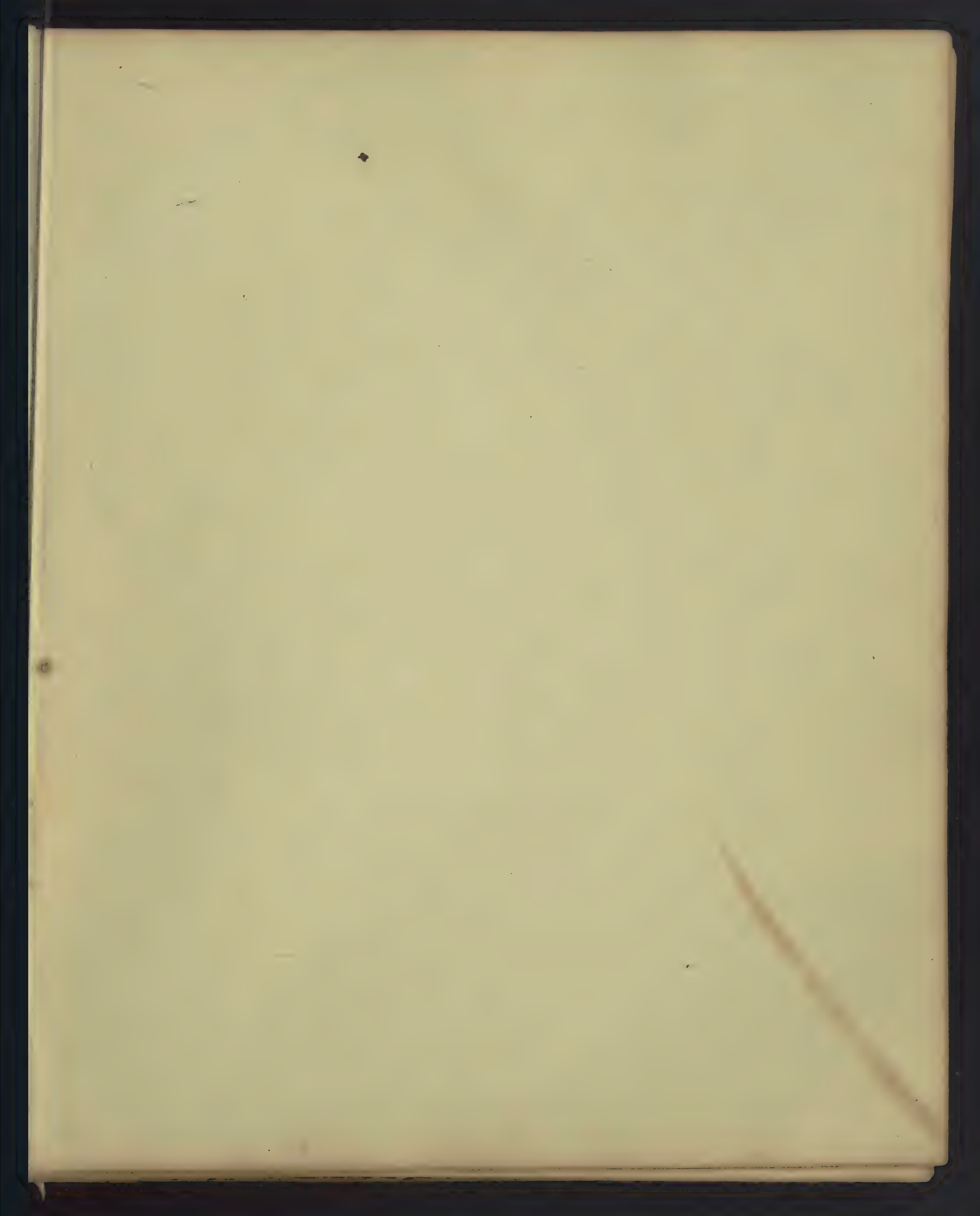
A judicial conception of the debt excludes
the necessity of the application of the stat. 1st Mar. 551.
the promisee said. Thus if A promises to pay B
a debt due by C, and upon an action brought by

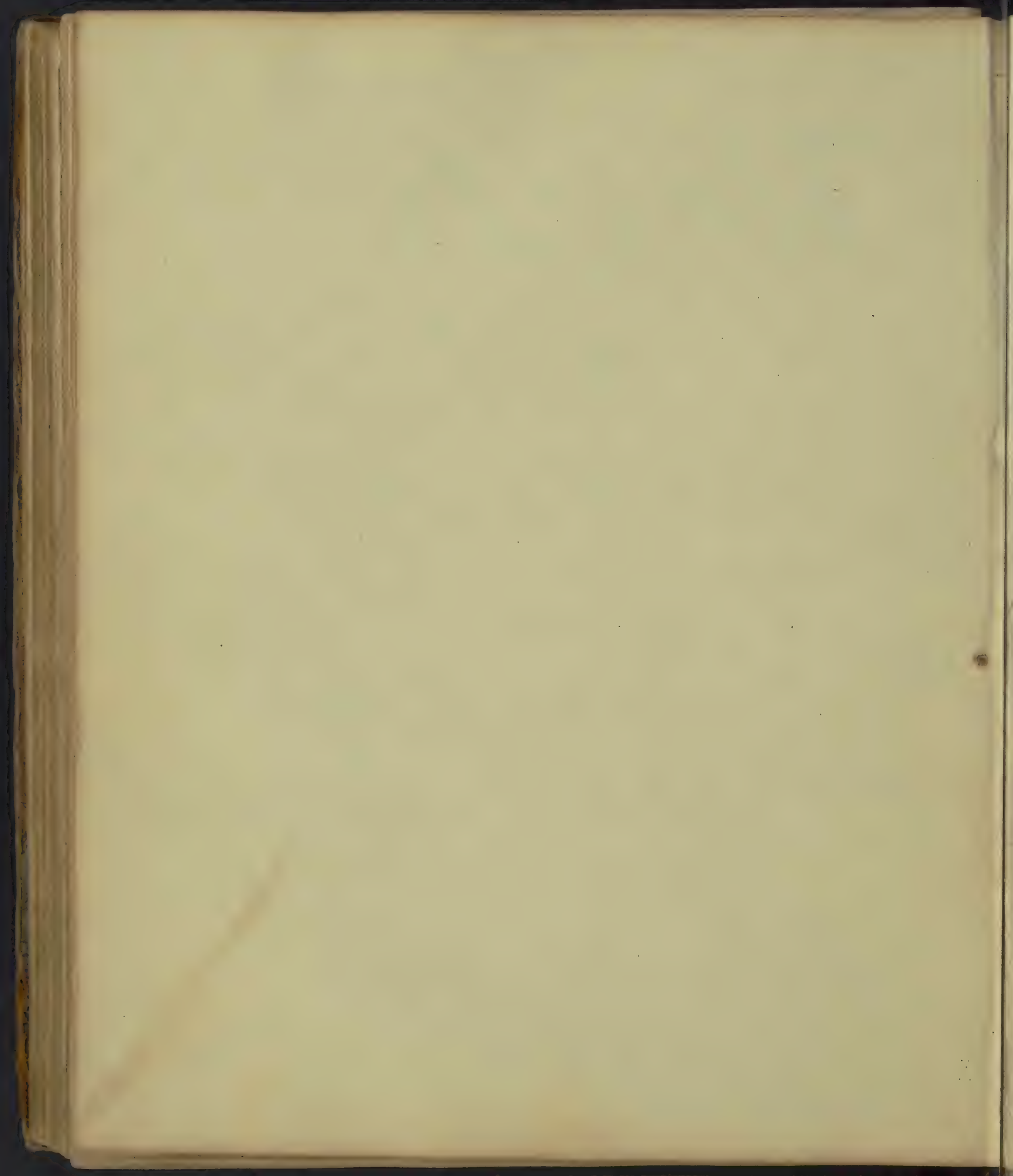
Contracts

St. Francis & Berjures.

B. I plead a tender of the money & refuse.
He in this plea confesses the promise, and cannot therefore afterwards deny the promise on the ground of it being parol. The object of it, that is to prevent suit. But here there is no danger of fraud in the debt's conception, & parties only at issue.

The stat does not affect the parol promise itself, but merely prescribes a new rule as to the method of enforcing it. When therefore such a promise cannot be enforced by reason of this stat, it is not because of any inherent defect in the promise itself, but it cannot be enforced. This is proved in the last case. The stat does not say that such a promise shall be void, or that it is void, but that no action can be maintained on that promise. *Continued on sheet No 16* But if the case be established without resorting to parol evidence they form good grounds of action or for set-off, &c. & the same is true under the last rule.





Act of Grand Jurors

When according to the distinction already
taken, the promise must be in writing, it is not
necessary in declaring upon it to state that it was
in writing, it is sufficient if he shows any evidence
that it was in writing. This rule modifies the pro-
position that the state introduces a new rule of
evidence, but no new rule of pleading. This rule
holds equally well as to all contracts created
by the act. If there is a document pleading one of
them however, without answer, then it is in writing.
This is the last ground, the defendant will then be left
to answer it. In substance the promise was
written or not does not lie on the face of the document.

If however a contract of this sort is plead-
ed in bar of another action, the plea is his plea and it
depends upon that it was in writing. That because the
statute has introduced it as necessary, it is an essen-
tial of principles of law, that the strictness of
proof in law shall be observed.

It is necessary however as well to declare, and
to show in bar the promise & consideration.

A parol contract to pay the debt of another, & to
be paid after death, cannot be enforced against
either party. For if one part of a contract is void the
other is also. Hence the contract is one & entire, the
obligation being in nature one whole, and as one part
of the contract which is entire has void, the whole
cannot be enforced. This is not the case of two distinct
contracts.

Agreement in consideration of marriage

When a party is bound to do a thing

It is a contract, whether the promise is entire, or whether it is to be done in parts. When the party is bound to do a thing upon the breach of a promise the contract is entire. But when the party is bound to do a thing in parts, without causing a variance, it is a contract.

Contracts of the kind are not considered by the law as much as are those of a contract of marriage. The law does not relate to the matrimonial contract. It considers it as a contract in consideration of marriage. But it does not consider it as a contract as are those in consideration of marriage. It was once held that the law does not relate to the matrimonial contract. It was once held that the law does not relate to the matrimonial contract.

Bull 154
12th 179
18th 179
18th 179
18th 179
18th 179
18th 179
18th 179

Agreement in consideration of marriage must then be written & signed. It was formerly doubted whether a party's agreement of the kind would not be good, but it has been held that it should be written & signed. It has been held that it should be written & signed. It has been held that it should be written & signed.

18th 179
18th 179
18th 179

It is unaccountable how the doubt should arise. It is unaccountable how the doubt should arise. It is unaccountable how the doubt should arise. It is unaccountable how the doubt should arise. It is unaccountable how the doubt should arise.

18th 179
18th 179
18th 179

that it is much an agreement as should be considered
under the act, neglect would not be necessary

that in a case as now in consideration, a
marriage is not intended as an agreement to marry
the whole matter is a public consideration & not
for a private purpose on the other side. This is a
general rule that when a contract on one side is
not made, the law is applied as a consideration
to enforce an agreement on the other side.

On these contracts are in themselves good, the
law requires a written or signed agreement, without
which they cannot be enforced.

It has been decided that a letter signed by
one of the parties is a public & known signature. The
fact that a letter signed by one party is
itself a formal instrument must appear that the
party to whom it was addressed, accepted the terms
and is in contemplation of them in solemnizing
the marriage, otherwise the contract is not binding.

1840 284.8.
2d Br. 22
3d Br. 318
2d Br. 201
3d Br. 202

Thus where the person to whom a letter was
directed was ignorant of the name contained in it
and the letter of the marriage. If he refused to
carry the contents into execution, there is no agreement
supplied by the inclusion of the initials of the father, &
then there was none.

1840 284.8.
2d Br. 22
3d Br. 318
2d Br. 201
3d Br. 202

And a letter written by one's own agent, stating
the terms of a marriage, which he has been
instructed to execute, is not binding.

Contracts

Stat of 1840, c. 10, § 1

It is said it will be binding. Here the intent in the
 deed has already been ascertained, so that there is a man
 promise to pay money. There has also been a great
 deal of litigation respecting the parcel of agreement.
 The grantor at the time of conveying the land to
 pay for any deficiency, especially the contents of the
 deed, whether such an account is within the intent
 of the dispute, etc. if one make a deed of land
 estimated at 100 acres, and agree to refund if the land
 proved considerably more than 100 acres.

It was finally decided that it was within the
 the stat. It has since been decided that it was not
 within the stat. by the Superior Ct. This decision, 1843
 was affirmed, and it is now the general rule that
 the promises were not within the stat. but be-
 cause they were not binding at C. L. I do not think
 that such a promise is within the stat. For it must
 cover the land conveyed by the deed, and the promise
 is merely to pay money, but land is the subject-matter
 of the contract, contemplated by the stat.

Parol agreements for the sale of lands are
 binding in such cases, the stat. notwithstanding.
 When I speak of land I mean to have it apply
 to all lands, whether in fee or otherwise.

And the great principle of these distinctions
 seems to be this: that such parol agreements are
 binding, provided they are within the spirit of the
 act and the intent of the legislature.

Contracts

Stat. of Frauds & Perjuries.

Where there is clearly no danger of perjury from the nature of the case, there the proof may be within the spirit of the act, the act is in force. The case must be one where the very nature of which no perjury can be feared. The only thing contemplated by the act is that which would arise from perjury. Where upon a parcel given in debt under a plea in bar which excludes the possibility of all fraud, the contract would be enforced for as fraud is not necessary, there can be no danger of perjury.

Where there is no danger of perjury in enforcing the agreement it is not within the spirit of the act, and may be enforced. Thus if upon a bill of exchange the defendant performs a contract, he is not within the spirit of the act, and the agreement will be enforced. If a no fraud plea be drawn, consequently no fraud is to be feared. This is the general rule as laid down in the *Chardwick's Case* and there has lately been a great ^{of opinion} unanimity on the subject. Forwille adds that the agreement may now be enforced in most cases, for as the debt can be paid the contract is now in writing, and the reason before assigned is correct.

Nov 22.
Jan 21 203.
20th 100. 100.
2000
Feb 21
March 21
Nov 22, 202
1000 1000.

1 Feb 1701

From these authorities it appears to me
still a doubtful question. Roberts says that it was
nearly settled that the debt was acknowledged
indebted and clear the debt. It is agreed on all
hands that a confession of the debt on the part
of the debt will often bind him. Thus if he con-
fess the agreement without pleading the debt, or
expressly agrees that he will abide by the terms
of the debt after such confession. Thus the debt pro-
ceeds upon the ground that the case is not of the
debt being taken out by the confession which re-
moves the all danger of perjury.

2 Mr. Ch. 567

2 Mr. Ch. 568

You will perceive that Mr. Macclesfield and
Mr. Mansel & Mr. Chert; have expressed an
opinion that the confession of the debt takes out the case
out of the debt. Mr. Roper, Chief Justice Eyre
& Mr. Eden are of a contrary opinion.

The ground taken in one of these cases, is
one very unsatisfactory, it relates to the question
whether the debt is so perfectly in his hands
as to be either to confess or deny the agreement.
Mr. Macclesfield decided affirmatively. The opinion of
Mr. Mansel & Mr. Chert is against. Mr. Chert is of the same
opinion as Mr. Macclesfield and thinks that the only
effect of the debt is to prevent the debt from
having the agreement abridges, is to prevent
the debt from increasing such an agreement upon
the debt, to prevent perjury.

2 Mr. Ch. 568

in the 2112

1701

Contracts

Act. of Grand & Regencies

The effect of the Stat is not to exonerate the deft from what he is contractually bound to do in every other case in Leg. i.e. that is to confess or deny the agreement. 2nd 9th Feb 1848

From these opinions it follows that if the deft deny the agreement, the plff must go without his remedy as he cannot prove it, but if he can prove it that takes it out of the Stat & the agreement must be enforced. It is said in one of these cases that the deft ought not to be compellable to admit or deny the agreement, because it would present him a temptation to commit perjury. But there is the same danger in every case in Rhy where the deft is compellable to answer. Besides this is not the tendency to prevent which is the object of the Stat. This is not admitting the plff to sue on the agreement upon the deft, which the Stat prohibits from fear of perjury, but the deft is always bound to answer in Rhy.

I feel perfectly satisfied with the opinion of Lord Macleod: so that the effect of the Stat is only to prevent proving the agreement otherwise, & that the deft is bound to confess or deny, & if he deny it he plff cannot prove it otherwise & must therefore lose his remedy, but if he does confess it of course takes it out of the Stat so that it seems to follow as of course that pleading the Stat cannot avail in such case.

Contract

of the land & the mortgage

If I am not deceived some light may be shed on this question by reference to other cases which admit of no question.

14th 218

14th 234

14th 289

14th 291-2

A parcel contract for the purchase of free land is a valid sale by the master of the ship under the order of the ship will be enforced. The agreement will be carried into effect simply upon the ground that there is no danger of prejudice. For the master is a co-venturer.

agent of the ship, and therefore he is considered as testifying without danger of prejudice. Now this could not be the case if the parcel contract were void.

14th 232

It is also a parcel agreement between the solicitor in the ship in a suit between the mortgagee & mortgagee is binding. It is supposed that there is no danger of admitting them to testify as the officers of the ship acting under the authority of their office, & on this ground the agreement the parcel is enforced.

According to several authorities a parcel contract for the disposal of interest in land, if enforceable given circumstantial facts, given which there can be no danger of prejudice in proving

14th 232

14th 232

14th 232

14th 232

14th 232

14th 232

an agreement, is binding. Thus, A gives an obligation to the mortgagee & with his consent, remains in possession, says no rent, & takes the profits, she is not a mortgagor; the circumstance from that the deed is not absolute, she it appears to be so on its face —

Continued.

21. 12. 1911.

An agreement between the owner of the Carri-
age & the occupier that each shall have one half and March 1899.
The deed is good, tho' it be not in writing. The
question here arose where the meaning of the word
lands in the deed and as the deed was not included
in the contract tho' ^{contract} parcel was held binding.

The cases above mentioned constitute the first class of exceptions.

There are other exceptions to the general rule of the state on the principle that an act ^{made by the} made to prevent fraud should not be made in ¹⁸⁴⁴ 1842 & subsequent to give it effect. The act being beneficial is to be liberally construed.

Hence this leads it down to said down as
 a general rule, that where a party to a parcel agree-
 ment has not performed it, will produce a greater
 fraud when the other party would result from
 a mere breach of the agreement itself, but will
 enforce it. Hence a parcel agreement within the
 stat. performed or partly performed on one side
 at the request or with the consent of the other
 party, will bind the latter. Even if the agree-
 ment under such circumstances were not enforced,
 the party refusing to perform would take down
 half of his own fraud. And in such a case
 if of the same enforced the agreement to the
 the same, the agreement would be settled in
 the parties.

Feb 23/2

of 1000 3 1 2

100 52 4.8

2-3, 11/4, 00

Free 154 2/12

Delivering possession of land in pursuance of a parcel agreement is a sufficient part performance - and on the part of the vendor, & he can compel the vendee to perform his part.

1894. 5

5. *Amor* 524

六、日 記

7. 11. 1942

39. 22

Contion

1. 100 100 100 100
 2. 100 100 100 100

Huber 345-8

in a Fan 82.

There have been

related the growth

7. 1. 1882

60. 52. 37.

It also payment of money as part of the consideration for the purchase on a parcel agreement has been held to be a part performance. On this point however the authorities are greatly at variance. The question is then what is now law, it may occur as a question why the payment of money is not a part performance as much as any other act, I suppose that those who approve the rule go on the ground that here the party may be in statu quo by recovering the money back, but that where a man has taken possession of land made an improvement he is liable to much greater injury. I can tell that at present I am uncertain from the authorities how the question must be decided. But that the inclination of my opinion is that the payment of money is a good part performance. The party who has voluntarily accepted the performance on the other side ought to be compelled to perform his part, especially as the other party cannot be restored to his former situation without the expense & trouble of a suit. Besides the party who has taken the money may be insolvent, & so that the party who has performed will be remedied.

Stat. of Mass. 1838

Payment of money is earnest in a verbal agreement does not take the case out of the statute. This is not a point for performance of the agreement for it is not in pursuance of the agreement itself, but merely a form of solemnizing the bargain, a form of consideration.

1st. 208.
2d. 209.
3d. 210.
4th. 211.
5th. 212.

It has been questioned, whether supposing the payment of money to be a sufficient part performance, the receipt of the money could be proved by parol. Cannot conceive how any doubt could have arisen here, the payment of money is a thing altogether dehors the agreement, it is paid in pursuance of the agreement, it is true but it is entirely an extrinsic fact itself, and may be proved by parol as much as any other fact, as a battery.

1st. 209. 8.
2d. 210. 4.

It also appears from the statute that the payment of money is not sufficient to take the case out of the statute, unless it is paid in pursuance of the agreement. The agreement is sufficient to prevent a party from denying the payment of the money. It will not be sufficient to take the case out of the statute, unless it is paid in pursuance of the agreement. It would not have been done, but with a view to take performance. Thus a blue cloth is offered in exchange for a new one, and the new one is not delivered. This is a contract, and the payment of money is not sufficient to take the case out of the statute.

1st. 211. 4.
2d. 212. 1.

3d. 213. 2.
4th. 214. 1.
5th. 215. 1.
6th. 216. 1.
7th. 217. 1.

19

Contracts

Mar. 20 Decret & Reprints

I observe that giving satisfaction, as
 in the case of a part redemption of land, is not a
 full discharge of the debt, but only a partial one, and
 the creditor is entitled to the balance of the debt, and
 the debtor is bound to pay it, and the creditor is
 entitled to the interest on the balance, and the debtor
 is bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it.

Am. L. 88
 1 M. 412
 2 M. 412
 3 M. 412

Marriage is a contract, considered as a part
 performance of a part of a contract, is considered as
 a part of a contract, and the creditor is entitled to the
 balance of the debt, and the debtor is bound to pay it,
 and the creditor is entitled to the interest on the balance,
 and the debtor is bound to pay it, and the creditor is
 entitled to the interest on the balance, and the debtor is
 bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it.

1 M. 412
 2 M. 412
 3 M. 412

But on the other hand a part of a contract
 is considered as a part of a contract, and the creditor
 is entitled to the balance of the debt, and the debtor
 is bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it,
 and the creditor is entitled to the interest on the balance,
 and the debtor is bound to pay it, and the creditor is
 entitled to the interest on the balance, and the debtor is
 bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it.

2 M. 412
 3 M. 412
 4 M. 412

Further down the page, it is stated that the
 the creditor is entitled to the balance of the debt, and
 the debtor is bound to pay it, and the creditor is
 entitled to the interest on the balance, and the debtor
 is bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it.

2 M. 412

Even a written agreement is not a contract, and
 the creditor is entitled to the balance of the debt, and
 the debtor is bound to pay it, and the creditor is
 entitled to the interest on the balance, and the debtor
 is bound to pay it, and the creditor is entitled to the
 interest on the balance, and the debtor is bound to pay it.

Cent. 100

Chas. Francis & Co.

the subject may be admitted by power, a
parol agreement, where there is a loan in the ex-
ecution of the ^{agreement} purchase. Thus where upon the ~~use~~
a parol agreement to make a mortgage, it was held
that having allowed the loan was refused to make
the mortgage required, the debtor would allow
to prove the parol agreement to make a mortgage.
Thus defeat the plan.

But it has been settled as above, is
 some no doubt correct. That a great contrast ex-
 pecting interest in facts & an other view of man 2 Day 54
 be shown, if it be merely an innocent to a friend.

But to have the land is necessary to secure
the joint contract. Now the action is not a
suit to enforce the joint contract, but to have
the land.

It is also a well known principle in in-
surance, that in case of a mistake, the policy is void
of effect, a mistake in the execution of the
instructions. For in such case the insurance is
not in the favor of the insured as the case of
the parties. Thus if I intended to give \$5000
but give him a bill for \$1000, conveying
\$1000, he may be allowed to prove the balance
not given as if it was.

The *He. longist.* is *He. 2. undulatus* var.
He. 2. undulatus is a *He. 2. undulatus* var.
 The *He. 2. undulatus* is a *He. 2. undulatus* var.

Contracts

Part of Trans & Purposes

2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.

may be given in evidence for the recovery of the
res. for the purpose of showing how much
may be recovered.

Part 24
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.

It is said that it would not be recovered if
it were not for the debt. The reason given
for the distinction is not satisfactory. The
books say that debt is a lighter remedy, but I
do not see why.

2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.

The Law is found in most cases, but it
is settled that the action of indebitatus will lie
to recover the value of the use of land. This action
will not lie however if the possessor of the
occupancy is adverse to the title of the owner.
Here he must resort to some other action
expected. This action cannot lie unless the
one person is in possession of another's land
with the consent of the latter.

2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.
2. 2. 2. 2. 2.

Contracts of the fifth class are such as
are not to be performed within one year after
the making of them. These must be in writing
or some other evidence of them.

It has been held in the case of *Wheat v. O'Leary*
that the statute does not extend to any agreement
relating to land or tenement. I have seen no reason
for this rule. Probably because the statute is not
the general contract law but is a special law
and is not intended to be applied to all contracts
of that kind.

1892-1893 - 1894

25. 1. 1880.
 26. 1. 1880.
 27. 1. 1880.
 28. 1. 1880.
 29. 1. 1880.
 30. 1. 1880.
 31. 1. 1880.
 32. 1. 1880.
 33. 1. 1880.
 34. 1. 1880.
 35. 1. 1880.
 36. 1. 1880.
 37. 1. 1880.
 38. 1. 1880.
 39. 1. 1880.
 40. 1. 1880.
 41. 1. 1880.
 42. 1. 1880.
 43. 1. 1880.
 44. 1. 1880.
 45. 1. 1880.
 46. 1. 1880.
 47. 1. 1880.
 48. 1. 1880.
 49. 1. 1880.
 50. 1. 1880.
 51. 1. 1880.
 52. 1. 1880.
 53. 1. 1880.
 54. 1. 1880.
 55. 1. 1880.
 56. 1. 1880.
 57. 1. 1880.
 58. 1. 1880.
 59. 1. 1880.
 60. 1. 1880.
 61. 1. 1880.
 62. 1. 1880.
 63. 1. 1880.
 64. 1. 1880.
 65. 1. 1880.
 66. 1. 1880.
 67. 1. 1880.
 68. 1. 1880.
 69. 1. 1880.
 70. 1. 1880.
 71. 1. 1880.
 72. 1. 1880.
 73. 1. 1880.
 74. 1. 1880.
 75. 1. 1880.
 76. 1. 1880.
 77. 1. 1880.
 78. 1. 1880.
 79. 1. 1880.
 80. 1. 1880.
 81. 1. 1880.
 82. 1. 1880.
 83. 1. 1880.
 84. 1. 1880.
 85. 1. 1880.
 86. 1. 1880.
 87. 1. 1880.
 88. 1. 1880.
 89. 1. 1880.
 90. 1. 1880.
 91. 1. 1880.
 92. 1. 1880.
 93. 1. 1880.
 94. 1. 1880.
 95. 1. 1880.
 96. 1. 1880.
 97. 1. 1880.
 98. 1. 1880.
 99. 1. 1880.
 100. 1. 1880.

1891

8

8. Pa 216
B. Dec. 251

Contract

Part of Francisco Perini's

must be in the matter as a signature to a copy
in the State of New York. But whether this
be true or not of the party who does not sign
the bill against the party who does the signature
must be a bill given.

Robert 186.
May 20.

See evidence regarding the signature in
the bill. It is said to be a sufficient
signature of both parties. But it has lately been
found that such signature is not good except with
the last name in the bill. The last name however
seems to be the property of this distinction.

Phil. 4. 118.
New York 186.
186. 11. 118.
186. 11. 118.
186. 11. 118.
186. 11. 118.
186. 11. 118.
186. 11. 118.

There are signs. The rules at such are new.
as contemplated in the bill in no sense of it. These are
signatures however which you as the ground of the
bill are not true.

186. 11. 118.
186. 11. 118.
186. 11. 118.

A name printed may be a sufficient signature.
Bill of parcels may legally have the name printed
to a bill of parcels is a sufficient signature.

186. 11. 118.
Robert 186.

And it is not necessary that the authority be
which an agent signs for his principal should be in
writing. A verbal authority is sufficient. This is not
the case with respect to bills, but is as to commercial
contracts.

Vener's Bill
Title. Com. 186. 40.
186. 11. 118.
186. 11. 118.

But it is not necessary that the identical contract
should be signed. The agent ^{may} be bound by
or the agent must mention the contract, if the
agent is signed to the bill within the bill.

186. 11. 118.
186. 11. 118.
186. 11. 118.

The signature is made as independent

186. 11. 118.

Contracts

Consideration

Hence the bare writing of an ~~instrument~~ agreement without a signing is not sufficient to support an action on the agreement.

Consideration

2 Hl. 412. A contract has been defined as an agreement upon which consideration. — Hence the consideration is of the essence of a contract.

Consideration as known to the Law is of two kinds. Good & Bad.

2 Hl. 497. A good consideration, is such as arises from affection or natural affection. Bad consideration is in contracts executed good as to the parties. — But as to third persons & purchasers they are considered fraudulent. — And in some cases such executory contracts will be enforced in Equity.

12 Hl. 176. Thus if a covenant to give his son a certain sum of money. The contract will not in general be enforced — But where the covenantor is dead, and the action is between the son & the father's representative the contract will generally be held good.

12 Hl. 176. A good consideration is something which is of value, and is not a mere gift.

7 Hl. 757. Contracts in the law are now considered in two ways. — Simple & Compound.

12 Hl. 176. A simple contract is one which is made and supported by a single consideration. — A compound contract is one which is made and supported by two or more considerations.

Contracts

Consideration.

A simple contract on the other hand is one
a contract in parol or a ~~unwritten~~ contract unsealed.
A parol contract, and an unsealed written contract
stand by the law of Eng on the same footing.

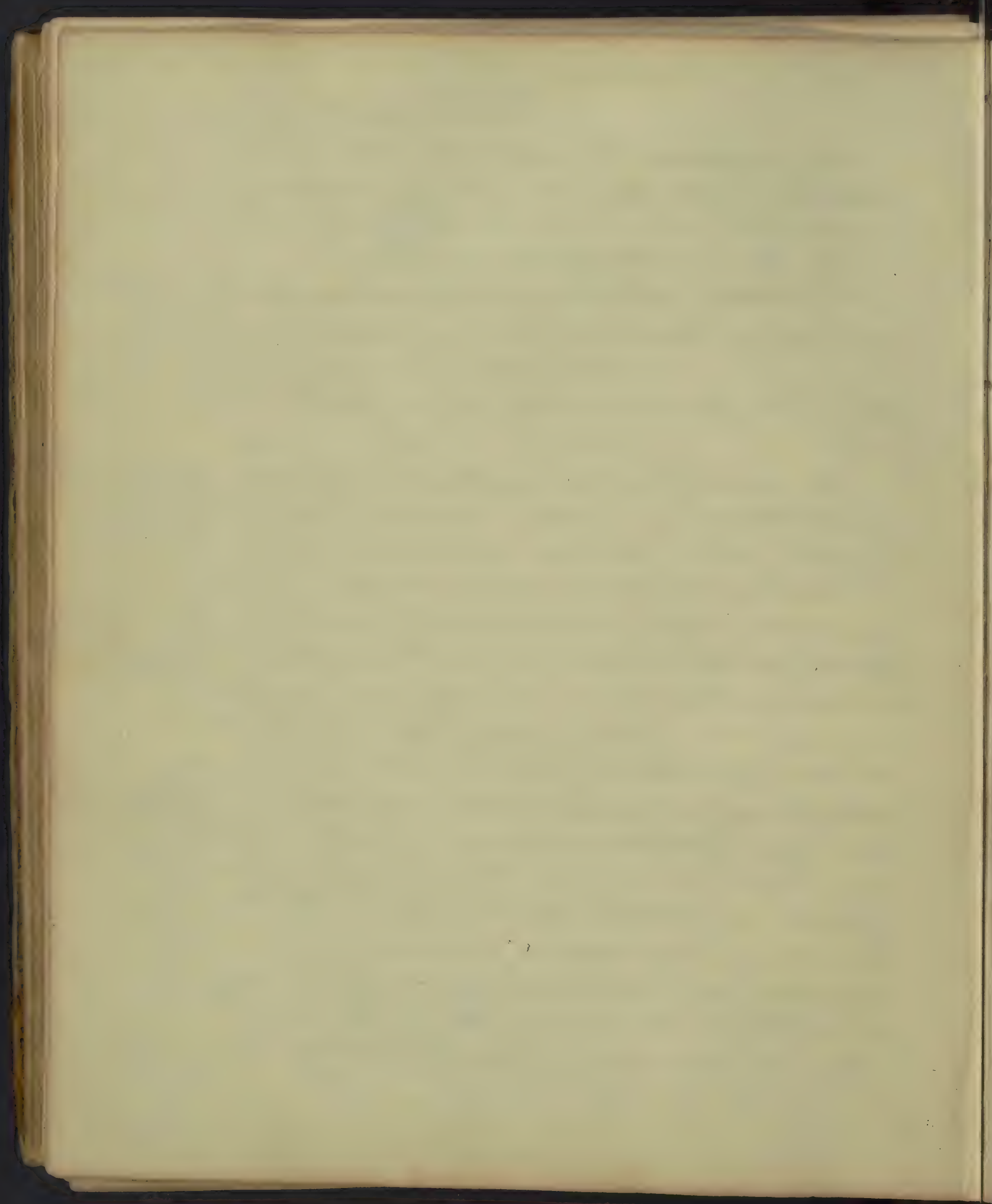
Little speaking - a writing not sealed is ^{Robts. J. C. 89.}
not a contract, but only evidence of a parol one ^{2 Mc. 455. 5.}
not. ^{7 C. 4. 58.}

It bears all instrument in writing can, ^{1 Mc. 455. 5.}
gaining a consideration are specialties whether sealed
or not.

An executed contract without consideration ^{2 Mc. 455.}
is void. It is a mere nudum pactum, and it is ^{How. 501. 7.}
a maxim of law, ex nudo pacto non oritur actio. ^{Call. 124.}
^{How. 501. 5.}

It has been said that a written contract without
consideration is good. And this opinion is probable ^{5 Burr. 1072.}
grounded on the nature of negotiable instruments. ^{2 Pol. 8. 44.}
But it should be remembered that such instruments ^{2 D. N. 71.}
are governed by a peculiar Law of their own the L. M. ^{1 Burr. 333.}
^{242.}
^{2 do. 244.}

It is clear that at E. L. merely reducing an ^{Devey 514.}
agreement to writing does not prove a consideration. ^{How. 308.}
And I think that no instrument is sealed, still ^{5 Burr. 1072.}
a consideration is necessary. True the person claiming ^{Call. 334.}
may not specially need not prove a consideration. ^{2 Pol. 440.}
But a consideration is presumed. ^{do 295.}
Again it is said that the deft cannot aver a want ^{How. 501. 5.}
of consideration, the reason of this is that his deed ^{do 340.}
estopped him from averring any thing contrary to it. ^{1 H. Bl. 340.}
^{3 do. 747.}
^{do 1531.}



Contracts

Consideration

I am the more I have known of the consideration. It is necessary to support a contract, but the want of it is not a principle of consideration, it is necessary to give validity even to a specialty. But the specialty always implies a consideration unless the want of one appears in the specialty or in another instrument of equal solemnity.

There is however a variety of opinion on this subject, some holding that a consideration is essential to a specialty and some that it is not. 1 Bro 208
2u 130
2u 201
6u 497

The rule respecting the necessity of a consideration applies in all cases except to executed contracts only. A contract to be performed will not be enforced unless there be a consideration, but as to an executed contract the rule is otherwise. The law will not in general enforce a contract without a consideration but where it has been already executed, the law will not inquire.

A consideration is said to be given in either of two ways, according to the amount of the consideration it cannot arise otherwise than by either direct flow from the advantages to the party undertaking, or from the fact that the consideration is the consideration.

This rule is so narrow, consideration may arise otherwise than in either of these ways. I shall give instances of the rule as it stands.

Contracts

Consideration

Grant then a contract may arise from something advantageous to the promisee. This if it takes part of the promisee's property for them, and the consideration arising from the acquisition of it would be a benefit to him advantageous.

2 Nov 20
2 Dec 19
2 Dec 18
2 Dec 17
2 Dec 16
2 Dec 15
2 Dec 14
2 Dec 13
2 Dec 12
2 Dec 11
2 Dec 10
2 Dec 9
2 Dec 8
2 Dec 7
2 Dec 6
2 Dec 5
2 Dec 4
2 Dec 3
2 Dec 2
2 Dec 1

The question of the consideration is immaterial and its an insignificant consideration can give effect.

But an act of service requiring it to be done in return for which the contract is made, is a consideration and is sufficient.

Secondly a consideration may arise from something disadvantageous to the promisee. This is nothing advantageous to the promisee.

2 Dec 4.5
2 Dec 4.0
2 Dec 3.5
2 Dec 3.0
2 Dec 2.5
2 Dec 2.0
2 Dec 1.5
2 Dec 1.0
2 Dec .5
2 Dec 0.0

The 1st is held a benefit again in 1st, and 2nd is held a detriment if he will do it if the promise is binding has no advantage from it to the promisee, but the promisee loses his property to be bound again to.

2 Dec 2.2
2 Dec 2.0
2 Dec 1.8
2 Dec 1.6
2 Dec 1.4
2 Dec 1.2
2 Dec 1.0
2 Dec .8
2 Dec .6
2 Dec .4
2 Dec .2
2 Dec 0.0

As a consequence of the former general rule, it is also a rule that a contract cannot be supported by a consideration past & executed. The reason is the consideration being past & executed no benefit can arise to either from the promise. This is in consideration of 1st. having been done, and 2nd. can not be done so the consideration is past, for no benefit is arising from it to either party. It is not the same as a contract made for a future act, and is a contract made for a future act.

Contracts.
Consideration.

I consider the past will report can
not, if it be from the report of the insurance
company, that it has been done with
my consent. I am sure, I should be able to
see him.

[illegible]

This far has been settled, it seems to have
 been always agreed that a commission should go
 one person in support a contract in favor
 of another who is nearly related to the Governor.
 Thus ^a promise made to I that if he would
 rec. on a certain case, he had a certain sum. to
 it's daughter was his mission.

When performance of a suit is the consideration of a contract it must have two requisites. First it must be perpetual or for a certain time and secondly, must be of an action in which the promisor or promisee is liable, is chargeable, or there is a color of his being chargeable. It would seem a better indication that the law will not enforce such a contract.

Contracts Consideration

no time being specified and the promise being
liable in the debt, the promise is not enforceable.

Smith 108
by 112
this book

But a promise in consideration of payment
and for a year or for a reasonable time is good
for the C will decide what is a reasonable time.

The second account is that the contract is
such, as that the party promising, is claiming the
liability, in exchange for his liability. It must
be shown positive for his liability. If that
this circumstance the consideration is insufficient.

Hardy 90
Smith 98
1st 224

Thus a promise to a mother to pay a debt
due from her son now dead, an consideration that
the gift will ascertain from giving her, for it is
not binding, for she is not liable for the debt of
her son.

23

To show be arrested on void process, and a
mother promise to pay for her son's case, the
promise is not enforceable.

But a promise to ~~pay~~ a ~~debt~~ in consideration
of payment, a suit would of there is a consideration
given for the suit. But where the executor of
a deceased man promise to pay his debt, which was
due when he was not bound to pay, as considera-
tion that the creditor would not sue for it,
it was held the promise was held binding for there
was some debt for which it was due.

Lat 1169
Shaw 272
1st 220

When payment of a debt is the cause
of action, and when the promisee cause of the
suit for non-payment is not to be incurred in so, it is

Contracts

Consideration

supplied that there should be a color for the suit

contracts entered into with reference to their con-

siderations may be viewed in the same light

1st When what is stipulated, is in consideration of a

performance on the other side, in this case the consid-

erations are said to be mutual. Thus if A agrees to

pay B a certain sum for the performance of a certain act

the performance of the act must be precedent to the

payment of money or the money.

2nd When "action" is brought upon a contract

of this description, the party suing must show a

performance or what is equivalent to one on his

own part, this does not mean that it must be paid

2nd Where performance on both sides was to be

concurrent, there neither party can withhold the

other to perform, but he has at his last done

what is equivalent to performance. Thus if I promise

to deliver to a third party what on a certain date

I cannot withhold it to pay the money until he

has delivered the subject, nor he can withhold it

until he has received the

money. If a place of performance is appointed

it is not necessary that the party suing was at

the place & ready to perform, but that the debt

was due.

3rd It is deemed that where reciprocal promises are

the nature of, the ~~action~~ the stipulation on one

side was in consideration of performance on

the other, that the performance was a con-

1. 100
2. 100
3. 100
4. 100
5. 100
6. 100
7. 100
8. 100
9. 100
10. 100

1. 100
2. 100
3. 100
4. 100
5. 100
6. 100
7. 100
8. 100
9. 100
10. 100

1. 100
2. 100
3. 100
4. 100
5. 100
6. 100
7. 100
8. 100
9. 100
10. 100

Contracts

Consideration

precedent, but where a day is appointed for the payment of the money, which will, according to the terms of the contract, arrive before the performance can take place or may arrive before, then the performance is not a condition precedent as it is necessary to give a right to the party claiming the money; for by the terms of the contract it is not required to be so, as the day may arrive before the performance can take place. If a time is fixed for performance on each side, but the time on one side is shorter than it is on the other, the person who is last to perform may perform last.

1. *Summ.* 320.
2. *H. B.* 240.
3. *Summ.* 451.
4. *Summ.* 147.
5. *H. B.* 334.
6. *H. B.* 130.
7. *H. B.* 389.
8. *Mod.* 42.
9. *Falk.* 171.
10. *Co.* 100.

The time in which he was to perform has elapsed, tho' the ~~off~~ has not yet performed himself.

But if the day of payment is by the terms of the contract after the performance, then the performance is a condition precedent.

1. *Pag.* 358.
2. *Falk.* 171.
3. *Falk.* 35.
4. *Mod.* 42.
5. *H. B.* 334.
6. *Summ.* 320.

3. The third class are where the promises are independent as it is often expressed where they are mutual. A contract in which the promises are mutual is directly the reverse of one in which the considerations are mutual. Promises are said to be mutual where the promise or undertakings on each side is the consideration of the promise of or the other. One performance is not a ~~condition precedent~~ ^{disposit} on either side, and either party may sue the other without averring performance on his side.

Contracts

Consideration

Law 650. When if in consideration of W's promise to deliver
 1. Sept 1872. a load of wheat at a certain time, A prom-
 1. Feb 83. ises to pay to a sum of money at that time, but
 1. Dec 29. either party may sue the other on his promise
 without averring performance on his side.

But even in these cases, if a Ct as Ex. 1
 will not enforce performance in favor of
 either party unless he has shown a willingness
 to perform on his side. This diversity of the
 rule of Ct and Ct of law, is not founded on
 a diversity of construction of the contract,
 but the interference of a Ct of Ct is dis-
 cretionary, and tho the claim be set at law
 Ct will not interfere. In the maxim of Ct
 that he who seeks Equity must do it.

There has been a contrariety of opinions
 & decisions in the books in the construction
 of contracts, where the stipulation on one
 side is in the form of the nominative ab-
 solute, as where A agrees to pay to a sum
 of money or a certain time to transferring to
 him at certain share in the stock. It was
 formerly held that these promises were in-
 dependent, but the later and better opinions
 are that they are not, and that the party
 suing must show performance on his part.
 It is clear that the consideration are mutual
 & consequently that the promises are not inde-
 pendent.

Calh 112
 Holt 112
 1. Aug 33.
 12. Nov. 33.
 contra 2 Bl. R. 1212
 1. Dec. 27.
 2. Dec. 76.

Contracts

Consideration

The question whether the promise is independent or dependent is to be collected from the meaning & interpretation of the parties, collected from the spirit of the agreement. The result is to be ascertained by the good sense of the case, it is a question of construction, and these rules are intended to enable the mind to discover what that intention is. It will be found from reference to the authorities that the same rule is laid down against construing the promise independent. This is commonly the most available mode, for then neither party will be obliged to trust the other against his will merely from the artificial construction of the agreement.

15 R. 645
7 D. 130
5 D. 372
6 D. 373
8 D. 373
2 N. 220
240 N.

2 D. 737
3 D. 371
Hill. 290
1 East. 689

The more extensive property is made up in the construction to do more with upon an act, it is a sufficient accident to support the undertaking. Thus if I give to grant to some other a certain piece of land, he receives them as bound by his promise, though he had no other then, he might refuse to do it, but if he actually receives them that is sufficient consideration to support the undertaking.

Libra 009.
919. 440.
50. 667.
5 D. 371.
3 D. 371.
3 D. 371.

The promise to do something for a person, has not been held to be consideration to support an action.

Contracts

Consideration

1st. The consideration of a contract is the thing which has been given or promised in exchange for the thing which is to be performed.

2nd. It is not indispensable that the consideration should appear in the contract. It may be implied from the nature of the contract, or from the facts which the case carries with it. It is sufficient if the consideration is as much as if it had been expressed in the contract.

3rd. A consideration is not a contract unless it is given in exchange for something. It is not sufficient that it is given for a purpose. This has been the general rule of the law. The consideration must be given in exchange for something. It is not sufficient that it is given for a purpose.

4th. The reason of the distinction is that where there is a promise to do something, a contract is made. But where there is a promise to do something for a purpose, no contract is made. The reason of this is that where there is a promise to do something, the promise is made in exchange for something. But where there is a promise to do something for a purpose, the promise is not made in exchange for anything.

5th. A contract is not a contract unless it is made in exchange for something. It is not sufficient that it is made for a purpose. The reason of this is that where there is a promise to do something, the promise is made in exchange for something. But where there is a promise to do something for a purpose, the promise is not made in exchange for anything.

Contracts

Consideration

portion of remedies according to the exigencies of the case, that a stay be given against the rights of the parties as the exigencies of the case may require. The forms of a stay of law will not admit.

It has been held that the party who has been wronged by a special action on the ground that the same has been in a great measure delayed. It was formerly held that it would not do to do so and

brought an action upon a quantum valent. It could recover to the whole and the goods were sold to him; but the case is now quite a

success and it is now held that it is a general principle that the debt may prove the value of the goods & pay only according to them.

It was held in *Greenough* lately decided that when the goods are sold for an express and

stipulated price to be paid that a certain sum, that the debt was fixed and when sued for the price. It is concluded from the cases that the general rule laid down does not hold in any

case of simple contract whatever. These exceptions to the rule are more, but.

It has been held that a total fraud in the consideration even after a specialty is a good defence at law. In a total fraud it is not so. But what the consideration

is value whatever. So it is of any value except money & land &c.

Bamford v. Barr
10 Q. B. 187
1871

Contracts

Construction

1800
200

Cases of this kind occurred in the land speculation lately so common here, persons, who had no interest in the lands, would give titles to them, here then the purchaser acquires nothing and it was held that it was a good defence at law, or being a total fraud.

But I repeat that this rule does not hold where the fraud is only partial, for then the party defrauded must resort to equity to have the contract set aside or the rights apportioned between the parties, or else he must pay up the whole amount of his contract, and then resort to a special action.

There can be no relief in equity, if a sufficient one can be had at law, but before the obligation is put in suit against him, he may have a bill in equity to set it aside.

Interpretation or Construction of Contracts

The object of all the rules for construing contracts, is to ascertain the intent of the parties: the contract however expressed cannot be carried beyond that intention.

The first thing to be inquired is, what is the intention of the parties. The rules of construction do not relate to the question whether the contract be binding or not.

Construction

Every contract must be carried to the very utmost extent of the intention, when the words of it can be so construed as to carry it into effect.

The terms of an agreement are to be construed
 according to their ordinary & not technical
 signification unless an express intention is
 made to the contrary. Thus in *Per* it has been de-
 termined that where a man agrees to purchase *Rowe*
 20 casks of wine, that he has no right in the casks *Rowe*
 until they are delivered. The rule is, that he is not to be presumed to have
 casks of wine that would be his absolutely, this
 distinction then is manifestly founded on usage
 the usage does not govern the contract, but the
 intention, which is to be collected from usage.

Goods, extensive quantities are to be consigned
and it is said as they are unsold at the place where
they are sold or consigned. I doubt whether
in that case, the subject of the contract
is to be delivered in another place than that in
which the contract was made.

Where a contract is made respecting money, the 1st denomination is to be taken into account to their import in the place where it is payable.

If the language of the agreement is ambiguous the intent may be inferred sometimes from the subject of the contract from the objects or different constructions & from the circumstances of the case.

Construction of contacts.

Thus if a paper connected with a paper, the two
 shall prove some point, and let it be known
 of one other paper, independent, the conclusion will
 not run at the level for the positive distance
 of another, all that is meant is that the in-
 ference is drawn to a point the little be true, ^{big}
 boxes being connected by the prevalence of a further
 little to an ^{paper} ~~paper~~ and similar to the paper.

I think it is much better to have a
single instrument, say the effect, as if it were in
form & structure an instrument of a different
species. Hence a ~~single~~ ^{single} instrument is one point turned
to the other with ~~reference~~ ^{reference} as a medium, so it
cannot operate as a medium. It is a ~~medium~~ ^{medium}
that a ~~medium~~ ^{medium} will cause much ~~medium~~ ^{medium} that
is a ~~medium~~ ^{medium} of the ~~medium~~ ^{medium}, for if it were
as a ~~medium~~ ^{medium} it would not be. It is ~~medium~~ ^{medium}
to prevent a ~~medium~~ ^{medium} in the ~~medium~~ ^{medium}, side ~~medium~~ ^{medium} in ~~medium~~ ^{medium}.

I observed that the intention might be inferred
 from the addition of different considerations, and
 by construction the contract according to the general
 rules. The business would be similar to a
 different abstraction, and a degree. However
 the present example of this case is over
 at no point, and it seems to be a matter
 of fact, in certain cases a stipulation in favor
 of a party would be considered as a
 the whole extent, the terms shall be as follows:

be considered as devoid of limitation, and not a dis-
tinction.

And the circumstances attending the transfer
may be reported to, & explain the intention of
the donor. Thus it is granted as a matter of course,
in consequence of future counsel to be given to
it by H. The counsel intended should be his
professional counsel. And to determine what coun-
sel was intended, the professional character of
the party may be shown.

has also a person makes a general view
of all his goods. He may be permitted to know
that he had none of them, as exact as they
were that it was not his intention that he
should have.

The construction of those of whom there is a
petition, and receipt, to be understood was that in
a case where there is a receipt of a particular claim,
it should be assumed, unless the latter general
words are contained by the former words reciting the
claim, that it was a release of the claim.
The court held that the receipt was not such a
release as to the claimant's claim, and yet
in such a case, the court had no demand
against it. The court held that the general words "as far
as the demand was made" were a release in the
world of the claim, and the court held that
the other demand remained good.

By Laing &
Solicitors
No. 290
St. Paul St.
Boston

Construction Contracts

But this rule does not hold itself in case of a recital of a particular claim. For if it is a recital of all demands it will bind him as to every demand that he may have against it, he has no particular claim, and therefore the general words have their full effect.

Of utter the approval of the obligee, the intention remains undoubted, the contract is generally to be construed most strong in against the party bound. For the words are his own & he ought to have advised accordingly.

There is an exception to this rule however where there is an ambiguity in the contract, in a penal bond, in such case the construction is to be in favor of the obligee. The reason is said to be that the condition is for his benefit, and that the extent of it is to discharge him.

Now a penalty which the law always regards with jealousy. Thus if a man agrees to be bound in a penal bond for the payment of money at a certain feast, and there are two feasts of that description, he will be held bound to pay in at the last of the feasts. And if one is bound to make a conveyance to (or a penal bond) to A & B, & he make the conveyance in the advice & direction of A & B, whether in the lawful or not he is discharged from the penalty. Yet I think a Court of Equity would compel him to make a single conveyance.

1. 110
2. 110
3. 110
4. 110

1. 110
2. 110
3. 110
4. 110

1. 110
2. 110
3. 110
4. 110

1. 110
2. 110
3. 110
4. 110

Contracts

Construction

There is another exception to the general rule, and where the application of it would be unjust, it may be made to a third person. Thus if a husband & wife make a house for life it is construed to be for their own life, & if then one dies it goes to the wife or the husband as if he or she were still alive in fact & a new estate might be assigned.

26 Subject to these rules the words "any" or "not" are to be construed in their most comprehensive sense, so as to include the largest number of cases understood. Thus if a grant is made to a child against all men, it is construed to be against all persons children &c.

Words of a general nature, but which are not of strict law, make a bill of sale of goods and chattels.

When legal language is used in a contract, it is absolutely to be understood according to its legal acceptation. Thus if an estate is devised to an heir or son, or he pays a certain sum annually, he has the estate to all his heirs speciatively, because the words here are law is of restriction, & not that of limitation.

The contract is to be explained according to the general intent of the parties at the time, & the whole context. Tho' this may be opposed to some particular words. The rule is that the general intent shall govern rather than any particular intent.

D. 22.2
H. 28
C. 11.2
10.

Annexing to Contracts

Page 81. 22.

1. Dec. 21.

1. Dec. 21.

1. Dec. 21.

1. Dec. 21.

The law is settled for an action on a contract, it is not delivered or sold as the contract requires the value of the thing at the time it is delivered or sold, or generally the rule of damages.

But there is an exception, when the value is not given or more after the time of delivery, in this case the value at the time of delivery is the rule of damages. If the contract had been performed the party into whose hands it went, might have kept it till the value had thus risen, and he shall not be deprived of that advantage by the neglect of the other.

But if the value at the time of trial has fallen, he shall have the value at the time of performance, the plaintiff can never lose by the failure of the other.

2 Dec. 5. 3.

1. Dec. 4. 1/2.

If several deeds or instruments are made between the same parties, at the same time, and express the same subject, they are all considered as parts of that contract, and the construction of all are to be considered together as much as if they were one entire instrument.

Annexing discharging & surrendering contracts.

2 Dec. 20. 3.

1. Dec. 4. 1

2 Dec. 4. 1/2

All the terms of a contemplated contract are ~~simple~~ as both sides the assent being consummated, and either party may sue & defend. But an offer or an assent is needed by the other, and some consideration, as a contract

Contracts

Annuiting etc.

either party in breach of the contract to the other
may sue for the price to perform his part.

2 Bac 241
2 P. 69. 4.
2 W. 455.

But if upon an offer accepted under such
terms earnest, or a future time fixed for perform-
ance the property is conveyed. The interest in the
contract passes to the purchaser, and the latter
becomes entitled to the payment of the money.

May 42
1861
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100

And if the property does not pass in the mean-
time the purchaser loses it. And the other may
recover the money.

But if on the offer the thing is accepted
and nothing else is done, as if no payment is

Howe 319
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100

made, no delivery given, no earnest paid & no
time specified for performance, the contract is

Howe 319
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100

not binding on either, if each party may con-
sider the other as not having performed, and
it is not binding.

So if I agree to sell goods
to B at a certain time provided B within that

Howe 319
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100

time chooses to buy them, and B within that
time makes his election to buy them, and in-

form of a sale, it is not binding, for here
was no contract, for B was not bound by the

contract, & it follows that it was not, for a
contract to be obligatory at all must be so

on both sides. C's notice does not make a
contract, and B cannot be bound unless by

a new contract. For the giving notice is
treated as the original agreement, which is

not binding unless at the time.

Reprints

Am. Lib. & Oc. Sc.

100 100
100 100

24 25 26

21 Dec 1912

2. Jan. 1877.

1721. 2. 2. 4.

Before a right of action has accrued on a written contract the parties may rescind it by declaration of their mutual dissent.

This rule I take to be founded on error. The relation is not the same as in

is founded on the effect of the parties, and
the mutual assent is no distinction before
either has a claim upon the other. Having
in a contract even if it is once broken,
it cannot be discharged by agreement, unless
that agreement be in a release by deed, or under
there is a new agreement substituted for the
one executed. There has been a rule con-
nominated by the breach of a contract the cir-
cumstance of continuing assent as at all times,
the breach creates a liability.

There is an exception to the general rule of discharge, in the case of acceptance of a bill of exchange, the acceptor of a bill may be discharged by parol after the time specified has elapsed, and he consequently, ^{no longer} holds. This is to be a positive rule of the Mercantile law.

1890

Pl. 229.

not on hills
of 3

84
P. 2

27. 2. 2. 2.

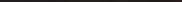
2. 2. 1

2 1/2

9. 2. 2.

1. 1. 3.

11. 10. 41. 11.



Contracts

Discharge release etc.

In such case the party who is prevented from
 1st Nov. 210th performing is in the same condition as if he
 1st Dec. 20th had performed, he has the same rights against
 the other party as if he had performed. Thus
 if it is after a certain price for building an
 at a certain time, & if he does not build
 at the time he is discharged from his obli-
 gation to build, but may recover of us the
 price fixed. If it is under a contract to be
 satisfied that the payment shall be made
 on paying a certain sum or more, on a certain
 day, if it is not at the end of the time &
 cannot be made, because the money is not
 offered it may take place, this condi-
 tion to perform is sufficient, however in this
 case I presume that a lot of Ex will con-
 sider it as transfer of the money for the

6th Dec 47.
 2nd Dec 21st
 3rd Dec 12th
 4th Dec 16th
 5th Dec 19th
 6th Dec 22nd
 7th Dec 25th

and contract may be annulled when
 by a higher valuation for the same thing. Thus
 if it is under a contract to be by simple contract &
 after giving a bond for the same, the first
 is merged in the latter. The reason usually
 assigned why the bond annuls the simple con-
 tract is somewhat artificial namely that
 the bond merges the other, & that the true
 reason is that the intention of the parties
 is not to have two remedies but to substitute
 a higher remedy

Contracts

Discharge d.c

But a contract of a given degree cannot be distinguished by a witness of the same degree. ^{In 1851} ^{In 1852} ^{In 1853} ^{In 1854} ^{In 1855} ^{In 1856} ^{In 1857} ^{In 1858} ^{In 1859} ^{In 1860} ^{In 1861} ^{In 1862} ^{In 1863} ^{In 1864} ^{In 1865} ^{In 1866} ^{In 1867} ^{In 1868} ^{In 1869} ^{In 1870} ^{In 1871} ^{In 1872} ^{In 1873} ^{In 1874} ^{In 1875} ^{In 1876} ^{In 1877} ^{In 1878} ^{In 1879} ^{In 1880} ^{In 1881} ^{In 1882} ^{In 1883} ^{In 1884} ^{In 1885} ^{In 1886} ^{In 1887} ^{In 1888} ^{In 1889} ^{In 1890} ^{In 1891} ^{In 1892} ^{In 1893} ^{In 1894} ^{In 1895} ^{In 1896} ^{In 1897} ^{In 1898} ^{In 1899} ^{In 1900} ^{In 1901} ^{In 1902} ^{In 1903} ^{In 1904} ^{In 1905} ^{In 1906} ^{In 1907} ^{In 1908} ^{In 1909} ^{In 1910} ^{In 1911} ^{In 1912} ^{In 1913} ^{In 1914} ^{In 1915} ^{In 1916} ^{In 1917} ^{In 1918} ^{In 1919} ^{In 1920} ^{In 1921} ^{In 1922} ^{In 1923} ^{In 1924} ^{In 1925} ^{In 1926} ^{In 1927} ^{In 1928} ^{In 1929} ^{In 1930} ^{In 1931} ^{In 1932} ^{In 1933} ^{In 1934} ^{In 1935} ^{In 1936} ^{In 1937} ^{In 1938} ^{In 1939} ^{In 1940} ^{In 1941} ^{In 1942} ^{In 1943} ^{In 1944} ^{In 1945} ^{In 1946} ^{In 1947} ^{In 1948} ^{In 1949} ^{In 1950} ^{In 1951} ^{In 1952} ^{In 1953} ^{In 1954} ^{In 1955} ^{In 1956} ^{In 1957} ^{In 1958} ^{In 1959} ^{In 1960} ^{In 1961} ^{In 1962} ^{In 1963} ^{In 1964} ^{In 1965} ^{In 1966} ^{In 1967} ^{In 1968} ^{In 1969} ^{In 1970} ^{In 1971} ^{In 1972} ^{In 1973} ^{In 1974} ^{In 1975} ^{In 1976} ^{In 1977} ^{In 1978} ^{In 1979} ^{In 1980} ^{In 1981} ^{In 1982} ^{In 1983} ^{In 1984} ^{In 1985} ^{In 1986} ^{In 1987} ^{In 1988} ^{In 1989} ^{In 1990} ^{In 1991} ^{In 1992} ^{In 1993} ^{In 1994} ^{In 1995} ^{In 1996} ^{In 1997} ^{In 1998} ^{In 1999} ^{In 2000} ^{In 2001} ^{In 2002} ^{In 2003} ^{In 2004} ^{In 2005} ^{In 2006} ^{In 2007} ^{In 2008} ^{In 2009} ^{In 2010} ^{In 2011} ^{In 2012} ^{In 2013} ^{In 2014} ^{In 2015} ^{In 2016} ^{In 2017} ^{In 2018} ^{In 2019} ^{In 2020} ^{In 2021} ^{In 2022} ^{In 2023} ^{In 2024} ^{In 2025} ^{In 2026} ^{In 2027} ^{In 2028} ^{In 2029} ^{In 2030} ^{In 2031} ^{In 2032} ^{In 2033} ^{In 2034} ^{In 2035} ^{In 2036} ^{In 2037} ^{In 2038} ^{In 2039} ^{In 2040} ^{In 2041} ^{In 2042} ^{In 2043} ^{In 2044} ^{In 2045} ^{In 2046} ^{In 2047} ^{In 2048} ^{In 2049} ^{In 2050} ^{In 2051} ^{In 2052} ^{In 2053} ^{In 2054} ^{In 2055} ^{In 2056} ^{In 2057} ^{In 2058} ^{In 2059} ^{In 2060} ^{In 2061} ^{In 2062} ^{In 2063} ^{In 2064} ^{In 2065} ^{In 2066} ^{In 2067} ^{In 2068} ^{In 2069} ^{In 2070} ^{In 2071} ^{In 2072} ^{In 2073} ^{In 2074} ^{In 2075} ^{In 2076} ^{In 2077} ^{In 2078} ^{In 2079} ^{In 2080} ^{In 2081} ^{In 2082} ^{In 2083} ^{In 2084} ^{In 2085} ^{In 2086} ^{In 2087} ^{In 2088} ^{In 2089} ^{In 2090} ^{In 2091} ^{In 2092} ^{In 2093} ^{In 2094} ^{In 2095} ^{In 2096} ^{In 2097} ^{In 2098} ^{In 2099} ^{In 2100} ^{In 2101} ^{In 2102} ^{In 2103} ^{In 2104} ^{In 2105} ^{In 2106} ^{In 2107} ^{In 2108} ^{In 2109} ^{In 2110} ^{In 2111} ^{In 2112} ^{In 2113} ^{In 2114} ^{In 2115} ^{In 2116} ^{In 2117} ^{In 2118} ^{In 2119} ^{In 2120} ^{In 2121} ^{In 2122} ^{In 2123} ^{In 2124} ^{In 2125} ^{In 2126} ^{In 2127} ^{In 2128} ^{In 2129} ^{In 2130} ^{In 2131} ^{In 2132} ^{In 2133} ^{In 2134} ^{In 2135} ^{In 2136} ^{In 2137} ^{In 2138} ^{In 2139} ^{In 2140} ^{In 2141} ^{In 2142} ^{In 2143} ^{In 2144} ^{In 2145} ^{In 2146} ^{In 2147} ^{In 2148} ^{In 2149} ^{In 2150} ^{In 2151} ^{In 2152} ^{In 2153} ^{In 2154} ^{In 2155} ^{In 2156} ^{In 2157} ^{In 2158} ^{In 2159} ^{In 2160} ^{In 2161} ^{In 2162} ^{In 2163} ^{In 2164} ^{In 2165} ^{In 2166} ^{In 2167} ^{In 2168} ^{In 2169} ^{In 2170} ^{In 2171} ^{In 2172} ^{In 2173} ^{In 2174} ^{In 2175} ^{In 2176} ^{In 2177} ^{In 2178} ^{In 2179} ^{In 2180} ^{In 2181} ^{In 2182} ^{In 2183} ^{In 2184} ^{In 2185} ^{In 2186} ^{In 2187} ^{In 2188} ^{In 2189} ^{In 2190} ^{In 2191} ^{In 2192} ^{In 2193} ^{In 2194} ^{In 2195} ^{In 2196} ^{In 2197} ^{In 2198} ^{In 2199} ^{In 2200} ^{In 2201} ^{In 2202} ^{In 2203} ^{In 2204} ^{In 2205} ^{In 2206} ^{In 2207} ^{In 2208} ^{In 2209} ^{In 2210} ^{In 2211} ^{In 2212} ^{In 2213} ^{In 2214} ^{In 2215} ^{In 2216} ^{In 2217} ^{In 2218} ^{In 2219} ^{In 2220} ^{In 22}

It is necessary that this rule should be strictly guarded from misconception. It is true that giving a new security of the same kind does not extinguish or destroy the first, but if the promise never to accept the ~~same~~ ^{new} note without satisfaction of the former, & does so, the last note may be paid as well as accept & satisfaction to discharge the first. This is not the giving the note which was to be destroyed, the first, but the express agreement that it shall be in satisfaction of the first.

But where a contract of a lower na-
me is inserted in a higher merely by way
of recital, or where it is inserted to corrob-
orate the former & enlarge the remedy it
is not merged. In such a case the parol con-
tract is not held out of view, it is then
presumed in the instrument, which then becomes
an evidence of it. Here the simple contract
is not turned into a specialty, but the instru-
ment itself is an evidence of its existence.

Contracts

Discharge of

A contract by deed cannot be discharged in court or an executed instrument, even before it is broken. For it is a maxim of E.L., that every obligation is to be discharged eo ligamine, quo ligatur. The rule is that it must be discharged with the same solemnity, with which it was created.

It is laid down in our books that accord & satisfaction, or even payment is not a discharge. This rule as it stands is laid down so as to mislead every student reading it, & take it to be a rule relating to the given and reading only, & amounts to this, that if a plea of accord & satisfaction of the bond is laid, but a plea of accord & satisfaction, or payment of the money due on the bond is good.

Upon the same principle if upon an action for covenant broken the deft pleads accord & satisfaction of the covenant his plea is not good, but if he pleads accord and satisfaction of the damages accruing upon it his plea is good.

When the right & obligation created by a contract exists in the same person the contract is at law discharged forever. If once discharged it is forever gone, for a personal right once extinguished is forever gone. It is at Equity however, in case the obligor becomes executor or administrator of the obligee, will revive the contract as if it were never discharged.

1044
1254
Lanc 29
1845
1846

1254
1842
1844
1845-1

1840
1841
1842
1843
1844

1840
1841
1842
1843
1844
1845
1846

Contract's discharge as

Now suppose the husband is an idiot & pays no
 notice against the wife the superior list of the
 court is not the wife.

If the wife is not an idiot the wife is not
 the contract is generally annulled by the court
 wife of the husband. If however a husband
 is not an idiot but is an idiot in some respects
 but is not an idiot in all respects & is not an idiot
 in the determination of the court, then the wife
 is not an idiot. For there is no right to annul the
 after the relation of husband & wife has been
 between a husband & wife performed during some
 time as was at one time the wife in some of
 marriage with him after she is not an idiot.

28

Now suppose the husband is an idiot & is not an idiot
 as was at one time the wife in some of
 marriage with him after she is not an idiot.
 Now suppose the husband is an idiot & is not an idiot
 as was at one time the wife in some of
 marriage with him after she is not an idiot.

Now suppose the husband is an idiot & is not an idiot
 as was at one time the wife in some of
 marriage with him after she is not an idiot.
 Now suppose the husband is an idiot & is not an idiot
 as was at one time the wife in some of
 marriage with him after she is not an idiot.

Discharge of Contracts

1820. 11. 11. when not bound to pay the money.

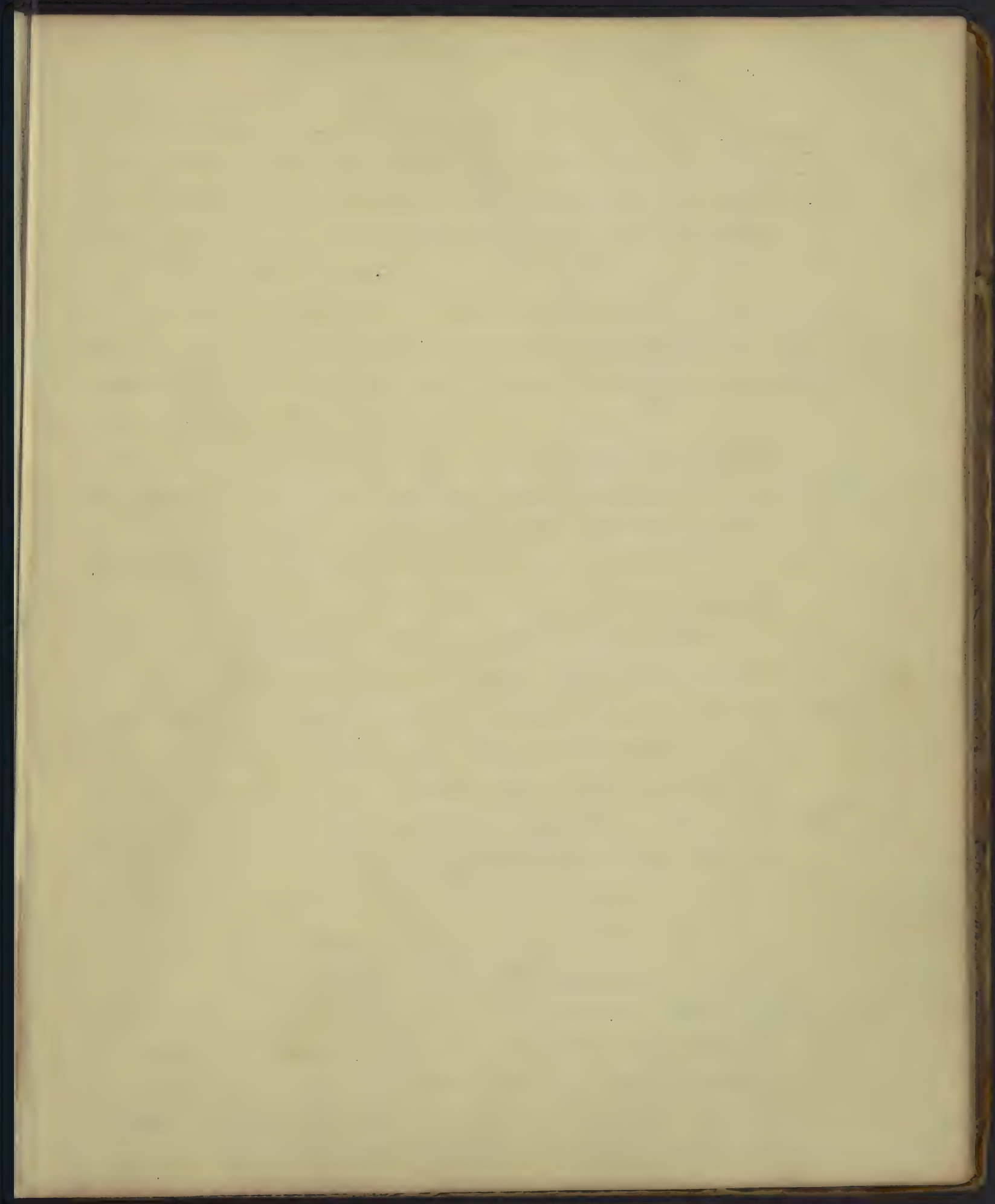
If an is bound in bond as condition to make a conveyance at a certain day, if he die before that day, the obligation is raised, the bond is cancelled & no answer is to be given.

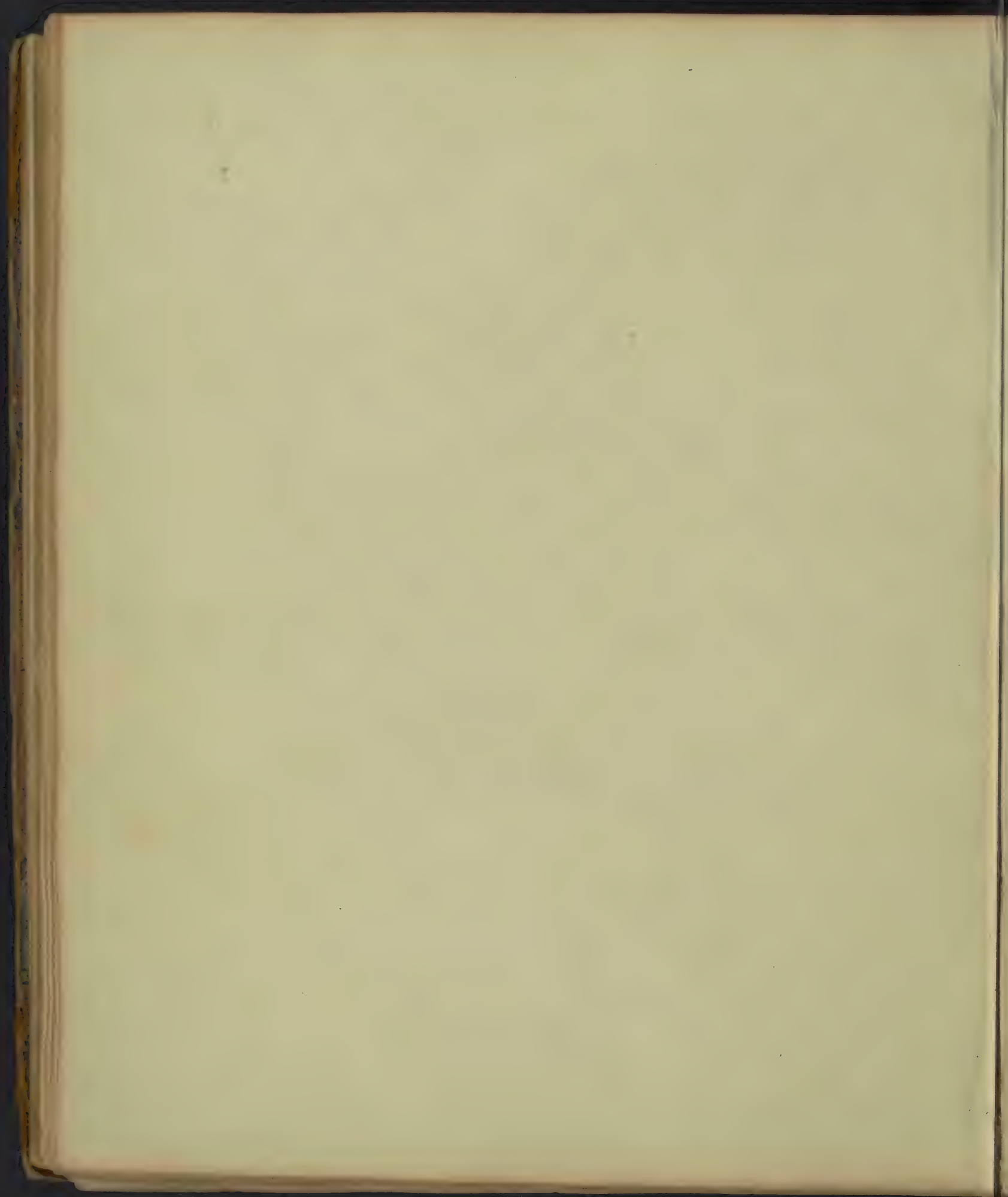
1820. 11. 11. The act of a third person cannot regularly vary the effect of a contract, unless the contract is the terms of it provides that it shall.

I gave a bond with condition that I should appear on a return action, if the same were days, & being if I had only six days notice in that respect & did not wait against him, I was not held liable as the bond.

1820. 11. 11. But the case is otherwise where the action provides that the act of a third person shall not discharge it. As if A contracts to purchase goods at the price I shall name, he is bound to pay the price named in it, or if he refuses to come over, the contract is discharged.

[Faint signature and scribbles at the bottom of the page]





Action of Account.

This is an action founded upon an actual
injustice of fact. That one who has received
the moneys of another to account for will
render a true & reasonable account if he does
the action lie.

This action can be maintained at C.L. ¹⁸⁹⁰ ¹⁸⁹² ¹⁸⁹² ¹⁸⁹²
only against guardians in socage, bailiffs and receivers.
It lies against joint merchants as well as
severally for each & then.

But by the Long Statute & the ^{action} ¹⁸⁹² ¹⁸⁹²
it is extended in favor of one joint tenant & a tenant in part & a
in common against the other as bailiff,
but this action did not lie then at C.L.

At C.L. also the action lay only against
the original parties themselves & not for or
against their representatives. For the action
was said to be founded on such intimacy between
the parties as that each knew the disbursements
of the other. — There was however an ex-
ception to this rule at C.L., for the action would
lie in favor of the representatives of one of
two joint merchants, but it would not
lie against them.

But the Long Statute of Shorten 2, 25 of
Chas 2, & 1 Hen 3, extended the action generally
to executors & it is in favor of executors in the case
of guardians bailiffs & receivers and also of
admirals. Also the Statute of Hen 3 extended the action
against executors as guardians &c. And also against

See the state

not a

Mac 19

Mar 29th

2nd 104

to & against the representatives of joint tenants
& tenants in common. So that the action will
now in general lie for or against the represen-
tatives as well as the original parties themselves.

A more case except that where the

from the
stock of 3
60

debt is due as guardian the debt is described
and charged as being either bailiff or receiver
to the fees or as both. But where the guardian
is it said he is charged only as guardian.

A bailiff is an agent or servant, who
1st Mar 22^a has received property of any sort, he belongs
to another to answer for, and he must
account for. And the bailiff is entitled of
course to an allowance for his reasonable

from D.

stock of 3

Mac 19

1st Mar 22^a

2nd 104

expense & charges. He must not only account
for the profits that he has actually made
but for those also as the case may be, that he
might have made by reasonable industry.

from D.

stock of 3

Mac 19

1st Mar 22^a

2nd 104

A receiver is one who has received money
for the use of another, and who is to render an
account of it, and to receive no compensation for
his trouble or expense. For he is not deemed to be
at any trouble or expense, having nothing to do
with the money, as a trading capitalist, as in the
case of a bailiff.

There are many other receivers
sent due to another, under an agreement express
or implied that he is to account to the owner.
He is a receiver and then liable.

St 4.

As the rule is general, the receiver
is not entitled to ~~see~~ the account for his
get there is an exception as between joint marchants.
For if one of them receives the money of the
firm and employs it in traffic, he may receive
an allowance for his trouble & expenses, and
account for the profits. For he has a right to
use the money of the firm in trading. Which is
not the case with a mere receiver.

1 Mac 192
1 Bos. L. 28
1 Acc. Cio. 128

From these distinctions it follows that a
bailee cannot be subjected in character of a
receiver. For if he were, he would lose his all-
owance, to which by law he is entitled.

1 Mac 192
1 Bos. L. 28
1 Acc. Cio. 128

The stat of 1800 extends the action to
joint tenants, tenants in common and coparcen-
ers and their executors and administrators. 17 Geo. 2
Acc. 1

This stat also gives the action of assumpsit
to those who are ordinary creditors against their
co-debtors & their bail & ordinary debtors. This stat
does not in terms extend the action to the executors
& administrators of receivers. ^{to bring them in} However it has
been the usual practice to bring them in.

The action of assumpsit founded on the
guilt of the parties, will not lie as a general
rule in cases of tort. If then one wrongfully takes
the property of another, he cannot charge
in an action of assumpsit for there is no promise
between the parties.

Jan. 21
 Feb. 21
 1. 89
 1. 89
 2. 89
 2. 89
 2. 89
 2. 89

There are however two exceptions to this
 rule. One is in case of the King in his
 privilege founded on his prerogative. The other
 is in case of an infant, who may bring an ac-
 tion of acc^t against a person ^{as guardian} who has com-
 mitted wrong on his property. So that in the
 country there is but one exception.

It has been determined & I think on the
 soundest principles, that if there are three or more
 partners in business, an action of acc^t will not
 lie to adjust their acc^ts, but application must
 be made to a Chancery to prevent a multiplicity
 of actions. In if 3 or 4 are in trade and 1
 complains that he has more than his share;
 here the dispute is between A & B only so that
 I would not be joined; and if I were joined
 the acc^t could not be legally settled. And
 if I were joined still it would be impos-
 sible to settle the acc^t in a Court of Law, as
 that could not settle the proportion between
 A & B each party as a Chancery could.

2. 89 2. 89

2. 89 2. 89

I find it laid down as a rule that an
 action of acc^t does not lie for a sum certain.
 Thus it is said that if A lends B £100 to
 trade with, that A shall not have an
 action of acc^t for the £100 but only for
 the profits. I do not think this a well found-
 ed principle, and believe the true rule
 to be that that the person who shall not

2. 89
 2. 89

Action of Account.

be charged as bailiff with a sum certain. But there are cases, certainly, where the action will lie in case of a sum certain. Thus if A receives a certain sum of money for B on a bond due to B, yet the action of assumpsit will lie against A for the money received. So if a sheriff collects a sum certain upon execution, the plaintiff may have an action of assumpsit against the sheriff. But in both of these cases the debt must be charged as received and not as bailiff.

1 Mac 20.1
2 Mac 101
2 Mac 101
2 Mac 101

I lay it down as a general rule, that when one receives a sum of money from another to the use of the latter to account for, the action of assumpsit will lie for that money, tho' a sum certain. Again, if A delivers a sum of money to be delivered on a certain event, the action of assumpsit will lie for that specific sum. All these cases are irreconcilable with the general rule that an action of assumpsit will not lie for a sum certain. So that the rule must be as I mentioned.

1 Mac 20.1
2 Mac 101
Com. Di. Acc. 143
22. 118
Co. Di. Acc. 143
22. 118

If money has been received of A to the use of B, B may maintain the action, tho' A did not deliver the money.

But when an action of assumpsit is brought for money received to the use of the plaintiff, if the plaintiff did not himself deliver it, he

Kealy 169

1. Mar 1922
100. 00
Dec 1. 00
Nov. 120

if he delivered it, it is not necessary

But if I deliver money to it, to be delivered
over to Mr. for my use, when it is delivered,

Can. Q. 1800
H. 2
1800.

A bailer or goods master or receiver to do
over them, an action of debt will not lie
against him tho' trans or delivery will. It
is necessary here to observe the distinction
between a bailer & bailiff. It will never lie
against a bailer, except when he is ^{within} the
land, as a bailiff or receiver. Both of these
are in the nature of a carrier. Nova Uni.

1. Feb. 18. 10.
 1. Mar 19
 Com. Di. Dec 4.
 (37)

has not receive the order to account for them.
 So also their action will not lie for a difference

Apr. 24.
Gen. Dir. Secy.
67.

But it is said that a debtor or under-
tenant, ~~cannot~~ cannot leave the action of
assault against the defor, for want of joining
between him & the debtor. It may maintain
his action against his bailor; & the latter against
the debtor.

Naam's
for Dingee

Page directed

If action can never be subjected to the action of another, he may be considered as free.

but the action - as such is founded on a social

And it is a general rule that an infant is incapable of making a contract, tho admitting of some exceptions.

If he who receives the property of another makes an express promise to account, this action is a special action of ass. on the promise will lie. Lalb. 9.
Carr. 89.
1 Mac 29.
2 Selw 154.

If the action is founded on a promise express or implied, the Ct will compel him to account where the promise is implied, and where an express promise is broken an action will always lie. — But if an action of ass. is brought the plff cannot go into a detail of the acts, but must state the damages sustained by the deft's failure to account. So that the acts would still remain unsettled. I do not see how there can be any accounting as in the action of ass., can take place in an action of ass., so that the rule appears to me correct notwithstanding the quote in Mac. Lalb. 9.
Carr. 89
Esp Dig 99

If one by deed acknowledges the receipt of property to account for, the other party may bring either his action of ass., or on the deed at his election. 1 Mol 118.
1 Mac 19.
Cr. Plin. 644.
Com. Dig. Acc't.
A. 2.

If one person lends the property of another an action of ass. will not lie against the lender, for there is no privity of contract between him & the owner. But upon demand a refusal to deliver an action of trover will lie. Com. Dig. Acc't.

Readings on part of 5th in bar in the
action of account.

was to done by a bill in ch., but never in ch.
in the 6th action of acct.

Upon the question what the 5th was
plead in bar to this action there has been
considerable contradiction. Let us to be done
upon this action then and there, as it is
almost out of use, a bill in ch. to acct
being generally adopted in its stead.

I take the rule however to be pretty
well settled. I lay it down as a rule
that the 5th may plead in bar of this
action any thing which shows that he is
not bound to account. And if he is not
bound to acct he should not be compelled
to appear before the auditor. Hence
it would be a good plea to aver that he
was not bailiff or receiver, which is a good
plea in bar, and is the general issue.

So a release of all actions is a good
plea in bar, for such a release discharges
his liability to account.

Upon the same principle an award of
arbitrators that the 5th should be acquitted
is a good plea in bar, it operates as
a release.

So also a plea that the 5th received
the property to deliver it over the 2d. &
that he has delivered it over, is said to be
a good plea in bar.

Mac 20
Com. Di. Sect.
P. 4
1 Mol 121

1 Mol 123
1 Mac. 20.
4 Mac. 85.

1 Com. 82
4 Mac. 85

Com. Di. Sect.
P. 5.
1 Mol. 122-5.
1 Com. 800.
3 Mol. 114-115.

But he must not be concerned with
cases where the aff. received property to ac-
count for it, his delivering it over on other
account. But this case I take to be one where
the aff. never was liable to account and
received the property to do some special trust.

But a plea that the aff. has made
payment or satisfaction for that for which
he was originally bound to account is not a
good plea in law. For the demand is liquid-
ity, he must account without proving his discharge,
and if he had said he ought to wait for
the judgment of the court, and then bring
in his acct. & prove his payment.

In the other hand a plea that the aff.
has been accounted is good in law, for if he
has accounted, of course he need not be
compelled to do it again. In this plea how-
ever he will not be allowed to go into
his acct. at large, before the jury, but
prove the fact that he rendered his ac-
ct to the court which was accepted.

But it is a general rule on the other
hand, that if the aff. once admits that
he was once liable to account, no special
plea is law wth the actor as good except
that he has accounted, or received a release
or some thing equivalent to it.

4 Bac. 29
1 Bac. 29
1 Pol. 29
5 Co. 9
125

2 Will. 113.
1 Com. Acct.
83
1 Wash. 425.

2 Will. 113.
125

He may plead an award, because it is
equivalent to a release, & any thing equivalent
to a release. You will observe that I
am now speaking of a special release in law.

As to all other defences, where the defendant
admits that he was once liable to act, they must be made before the auditors. ^{2d W. 110-2}
2d W. 110-2
2d W. 110-2
188.

The defence of having been accounted
or been released must be specially pleaded.
Because it is repugnant to a general
issue which is admitted as that the defendant
was once liable.

When the auditors the parties are
pleaded and join issue in law & fact. The
law books say that when issue is joined
either in fact or law that it must be
carried before the jury to be tried. This is
undoubtedly the case as to an issue in law
but as it relates to fact, it must be con-
fined to special facts.

2d W. 110-2
2d W. 110-2
2d W. 110-2
2d W. 110-2
2d W. 110-2

This rule as to issues in fact does not
prevail in some, they are always tried be-
fore the auditors.

Another general rule is that whatever
can be pleaded in bar of the action must
be pleaded & that no advantage can be
taken of it before the auditors. This rule
is founded on principles of common sense.

1 Mac 21
Orb on 5th
92. 110
24th. 73
21. 113
24th. 111.

For if the deft can defeat the action in a fine
and plea, and has not done it, but put it
off to the trouble & expense of the action,
he shall not afterwards take advantage of it.

Another general rule is that nothing
can be pleaded before the auditor contrary
to what has been pleaded before the Ct
and found. And this rule may be ex-
tended somewhat farther, for I take it to be clear
that the deft can not plead before the audi-
tor any thing which impeaches the judgment
and verdict, or any thing impliedly con-
trary to it. Thus the deft shall not plead that
he never was bailed for the judgment given
on the ground that he was. Neither can
he plead a release, for the effect of a re-
lease is to render him free from liability,
it does not but the judgment has settled that
he is ^{liable}. So of an acquittal. So also the plea of
fully accounted.

Orb on 82
22nd. 116.

But it is convenient for the deft before
the auditor to plead any thing which could
be pleaded in bar of the action, and
which evinces that he ought not to be
liable. This rule is universal. Thus if a
goods-carrier by water, is sued in an action of
accy, he may show to the auditor that the
goods were lost by stress of weather, so
also that the goods were thrown overboard

Orb on 84
22nd. 116
24th. 111
24th. 111

Relation of Account.

necessity to save the vessel.

It is also good accounting that the property with which the ship was entrusted as bailiff or factor, was taken by public enemies, or robbers, without his fault.

Inst. 89.^a
 l. 600.
 Co. 84.^a
 Com. Di. Acct.
 611.

It is also good accounting that the property entrusted to the ship was perished, & that it was lost or injured in that way without his fault. That it is not competent for the ship to show that he sold the property on credit, and that the purchaser became insolvent, unless he was authorized to do so by his instructions. And that he holds even tho' he sold them on credit to prevent a total loss.

2 Mod 100.
 1 Mac 21

The ship in accounting is not liable in any losses occasioned by inevitable accident, public enemies, or robbers without his fault. This is good accounting.

Com. Di. Acct.
 C12.
 Inst. 89.^a

The bailiff is also allowed his reasonable expenses. - But this rule does not hold in case of a bailiff of his own wrong. As where the bailiff enters upon the property of an ship, the ship can hold him liable as guardian, tho' he would not be liable entitled to compensation for his trouble.

1 Sd.

The receiver is not entitled to any allowance.

Com. Di. Acct.
 813
 Inst. 140.

When the award is returned to the Ct, fi
2 Inst 156 nal judgment is rendered on the award.

In our practice the fees of the auditor
are included in the costs to be recovered by
the successful party, he is to pay the au-
ditor at the time of the award, and then
charge it against the opposite party.

In Eng, the action will lie before
a single minister of the law, as a justice
a Justice of the peace. He does all, renders judgment
quad composit, & then himself takes the
account. Our stat provides that in ac-

tion of book debt for more than 14 dol
Our stat that the Ct may appoint auditors
to adjust book acct, as in the action of
acct. And under our law no ap-
peal lies from a judgment given in a County
Ct upon an award of auditors.

In Eng the C. action of acct is almost
entirely superseded by a bill in Chancery.
The reason is that in an action of acct
at C. L. the plff is not entitled to a discov-
ery of the books & papers of the def, nor
to make him answer upon oath.

Our stat has virtually given the
auditors all the power of a Ct of C. L.
in Eng. So that the action of acct here is
as effectual as a bill in Ch. in Eng.
Both the auditor, if either party is


St Con 28
or 29.

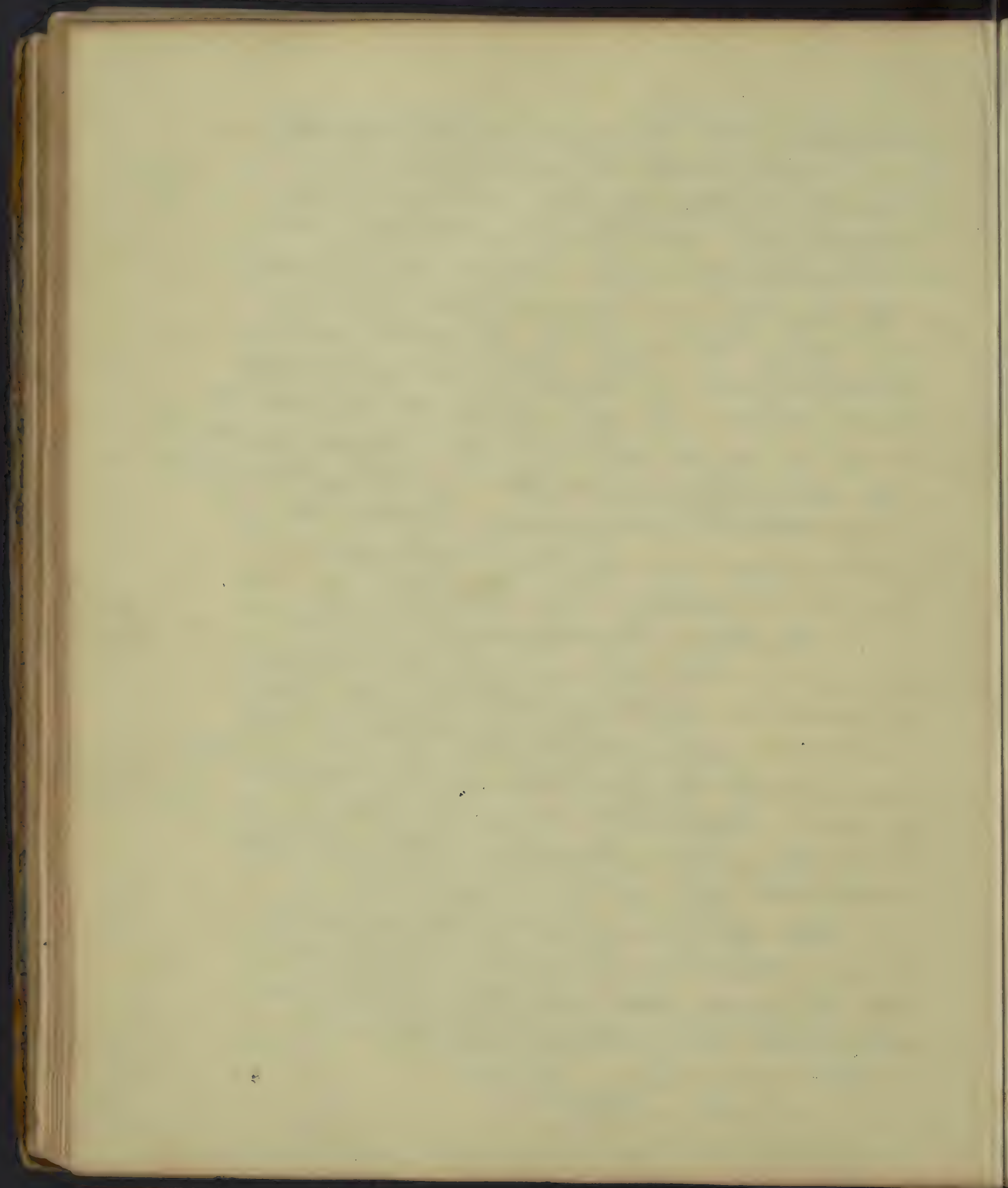
240 249
281. 2. 249.

disabilities with the award of the auditors. Mac 21
he may apply to the Ct for relief. It is
difficult to determine the subject ground.
such applications will be admitted. It is clear
however that the award would be set aside
if the auditors had exceeded their commission.
So if the auditors had made a mis-
take on their own principles. So also if they
mistake the law as general fact, the award
may be set aside. But if the auditors have
been guilty of any misconduct or corruption
and the Ct will not enquire whether the
award was just or not, but will immedi-
ately set it aside.

Objections to an award of auditors
are made in Court by way of remonstrance
in writing. In such cases the Ct will not
go into an enquiry of the facts again, but
will surmise the law as general fact, appeal
as on the face of the award, or else admit
ted by the auditors themselves. The award will
be set aside.

But in case of corruption or mis-
behaviour, the Ct will enquire of any per-
son, the upon mere questions of mistake
enquiry can be made of the auditors only.





Action of Debt.

This the one of the actions at C. L. and formerly much in use, is now very much restrained. And is in a great measure superseded by that of indebitatus assumpsit.

The legal acceptance of the word debt is as follows: it is a sum of money due by contract or express contract. Thus if a house for rent be given for a sum of money the action will lie for a note of hand.

The action will lie also for a sum of money, which tho' not exactly ascertained at the time of the contract, is capable of being ascertained in which is meant that it shall be ascertained by reference to some known standard. Thus if I promise to pay to the amount of an account he has against me, he may sue for the account. The sum may be ascertained.

The definition by Bl. of debt, is not as I knew the law, ~~not~~ strictly correct, I conceive that the word ~~debt~~ is improper there;

I believe the law to be that an action of debt will lie in some cases upon implied contracts. Bl. follows up his definition & says that it will not lie upon an action where no sum is agreed or ascertained. As if a person agrees to purchase an article, but no specific sum being agreed upon the action will not lie.

201
2 Bac. 124

But concerning that in some cases, will be
on an implied contract. As if a sheriff, under
an execution, the plaintiff may maintain an
action to recover the money from the sheriff.

It is still said however that an action
of debt will not lie upon an implied con-
tract to pay an uncertain sum. As if a
seller goods to A for a fixed price the pur-
chaser cannot maintain the action of debt to
recover the value according to the rule.

But I believe that the action may now
be maintained in such case. And I think

this rule must have been founded on the
ancient rule that the plaintiff must recover
the precise sum declared for. But that
rule is now relaxed, & the plaintiff may recover
as he now pleads, & he can now recover more.

2 Bac. 13

12 Pl. 550

And as the plaintiff is not now bound to
show the precise sum for which he sues,
I believe that the action may now be
maintained on an implied contract for
an uncertain sum.

I observed that this action is now
almost out of use. This is owing to two
causes. One is that the debt was permitted
to merge his claim which converted it
into that the debt and he owed the debt
nothing and recovered eleven of his neighbors
to sue. But this belated him.

The other was that the ~~plff~~ was under the necessity of recovering the precise sum decreed for or nothing. But this rule is not now observed.

1 Bl. C. 107
2 Bl. 219
2 Bl. 108
1 Bl. 108
2 Bl. R. 1221
Dyer 2. 409
1 Bl. 219
5 Bl. 1

It is said however that the action of debt as a simple contract, has been restored in Eng. I know but of one action, and suspect that it is rarely used.

But an action of debt as a simple contract will not lie out of E. against the maker or indorser of the debt. The original reason was that the executor or adm^r could not wage his law as the debtor could. They cannot wage law because they cannot know whether he was indebted or not.

Mand. 82.
Lew. 200.
Chit. on B. 219.
Co. 82.
Br. Cal. 135.
Eg. Di. 172.

This action will lie against the maker of a promissory note, or as the rule is laid down, on a promissory note. Whether this action can be maintained against the indorser of a promissory note is not well settled. It strikes my mind this action cannot be maintained against an indorser unless it would now extend that action further than it has been heretofore. The maker of the note is a debtor, but the indorser seems to me to be the issuer of the note to the promisee, if the view be correct, the action cannot be maintained against him.

Chit. on B. 221.
10 Mod. 38.
Stu. 680.
8 Mod. 373.

And yet if the action of debt should
be extended as far as that of assumpsit
has been, judges might find analogies to war-
rant in application.

If one expressly promises to pay
a sum of money for property delivered to
himself for his own use, for his services
to himself, the action will doubtless lie.

3 Rand 880 But if one engages to be answerable
in Chas 880 for the debt of another, he is liable on
2 Mac 20 his express contract or promise, but can
Chas 1020 not be subjected to it in the action of debt.
Lyer 2122 This case seems to me analogous to that
of the insurance.

In these collateral promises or con-
tracts, ass. or a special action on the case
L. Ray 82 is the only proper one. Still however ass.
2 Car 104 will lie for goods delivered or services done
140. 193 for the use of a third person, when the
person to whom they are delivered or from
whom the services are done is not himself
liable. As if I apply to A and direct him
to deliver goods to B a charge then to my-
self, the action of debt will lie against
me.

An action of debt will not lie in fa-
vor of the payee against the acceptor of
a bill of exchange. For the acceptor is

Debt an Judgment.

You will perceive from the definition and the rules, that this action always lies for a certain sum in money. It never lies for damages. Where the sum to which the party is entitled is merely presumptive, his remedy lies in damages, but not in an action of debt. Suppose a man takes my property & converts it to his own use, his remedy must be in damages, it can not be in debt.

After a claim, amounting in damages has been liquidated by a judgment affix, debt will lie upon that judgment, because what was originally damages is now converted into debt by the judgment.

And upon the same ground an action of debt will lie for an award and satisfaction, where the award is of a sum certain. For an award is in the nature of a judgment for most purposes.

It is a judgment. For when a debt is in evidence on execution an action of debt will lie upon the judgment. For taking the debt out of execution, is for the sake being a satisfaction or in nature of a satisfaction of the judgment. And further it is a debt in execution of damages by the consent of the creditor or himself. The latter can never afterwards maintain debt on that judgment.

1 Mol. 602.
2 Bl. Co. 455.
Holt 200.
2 Mac. 14.

1 Ann. 244.

1 H. 20.

1 H. 220.

1 H. 220.

1 H. 220.

Debt on judgment.

A voluntary discharge of the debt by the plaintiff or execution, is a perpetual discharge of the debt. 112 Mass. 21
112 Mass. 21
112 Mass. 21

So also if goods to the amount of the execution are taken under it, the action of debt will not lie while the goods remain under seizure. Where the plaintiff has seized goods it is his business to gain satisfaction from them. 2 Mass. 212
2 Mass. 212
112 Mass. 21

If however goods are taken to satisfy only a part of the execution, as a shop. 112 Mass. 21
112 Mass. 21
112 Mass. 21 the plaintiff will lie for the remainder on the judgment.

To proceed with the subject of debt on judgment. If a plaintiff or execution cannot recover after the lapse of a year and a day after the judgment. So that in such case the plaintiff must lie on an action of debt on the judgment. But by the Statute in 1822 a plaintiff requires the debt to be paid cause when the execution shows on the judgment should not go against him. So that now the plaintiff has his election of two remedies. But where the execution has been suspended by a writ of error, it may issue after the lapse of a year and a day. This is the only exception to the general rule.

Where an execution is suspended the judgment will revive.

After a year & a day then debt on judg-
ment will lie but it has been questioned whether
it will lie before the expiration of the
year & a day. I think it will from its antient

In Rome there is no precise time lim-
ited for taking execution on a judgment. There
is therefore no necessity of bringing debt
on judgment after the lapse of a year and
a day, for execution will then issue. It
seems to be well settled that debt on judg-
ment will not lie, while execution can be
obtained by the execution.

It is said in law that debt on judgment
may be maintained before the lapse of the
year and a day, because it is to punish the
debtor for not having paid the judgment, and
to save the plaintiff the cost of the execution.

But the costs of a new suit would be greater,
and I think the practice in law preferable to that in
equity.

It is clear in Rome, that when the ex-
ecution cannot issue debt on judgment will
lie. No time is specified to take an execu-
tion in Rome. To debt on judgment is allowed
where the judgment was entered in a case in which
the plaintiff was a creditor and the defendant was
a debtor. In such case the plaintiff is
allowed to take an execution at once.

Action of Debt.

But here as in *Bar* a writ of *scire fac.* is
concurrent with the execution except in
the case of the justice last mentioned.

It is settled in *Don* that debt as judg-
ment will be where full benefit of the
judgment cannot be obtained by taking out
execution. As if the debtor has absconded
and left no visible effects, but has left
debt due to him, then debt as judgment will
lie to draw the debt out of the hands of
those indebted to the debt by foreign attachment.

*Realty 211,
221.*

3. So also if judgment has been rendered in
a neighboring state & the debt has removed
into that state leaving no means of satis-
faction in the other, debt on the judgment
will lie against him here. And thus this
the time for the execution to issue has not
arrived.

Our *Chs* have helden that a bill may
maintain debt as judgment (even while the
bill may take execution on the judgment)
and lie for the interest. I should have
thought this decision would be sounder in-
consistent the principles of law. I admit-
ted it will completely overturn the rule that
debt as judgment will not lie while satis-
faction may be had under the execution.

An erroneous judgment will support
an action of debt as well as one that is
not erroneous. The erroneous judgment
stands good in law, until set aside by
a writ of error or some other method
altogether in that particular person.

11 W. 345
8 B. 122

11 B. 458
2 Mac 211

But the case is very different when
the judgment was strictly valid, for that
could not support the action. But since
an erroneous judgment is frequently necessary
it is good to all intents & purposes.

By the constitution of the U.S. it
is provided that full evidence shall be
given in each state to the public pro-
ceedings, records, records, &c. of every other State. If
an objection has arisen the question,
whether in an action brought in one state
on a judgment in another, the original count
or action is examinable, or whether the
judgment in the other state is conclusive. In
New York it has been determined that the
judgment of the other state is not conclu-
sive. And in Mass. & Penn. that it is.

Const. U.S.

Article 4, sec. 1.

12 Johns. 219

24 W. 183

Quinn v. ...

22 Dallas 202

Case v. ...

It see reference to
chit. title

According to the decision in New York
it would seem that judgments in a neighbor
in that are viewed in the same light as
those of a foreign nation. I am under
myself fully determined as the point

This question does not depend so much upon rules of law, as upon constitution of points. The mechanism, of my, however, is held rather in favor of the decision in law.

Foreign judgments in C. L., are not strictly records, they are only *prima facie* evidence of a legal demand. Now a judgment rendered in one state is absolutely conclusive in that state, but not a foreign judgment. It is now well settled that the action of a court will be on a foreign judgment, but such judgments are considered usually as *prima facie* evidence of a claim in the ~~offt.~~ ^{offt.}, so that the answer *probandi* lies upon the ~~offt.~~ ^{offt.}. The judgment is the only *prima facie* evidence, the answer is conclusive, unless rebutted. *Prima facie* evidence is always conclusive unless rebutted. Page 1
267/410

But like a foreign judgment is not conclusive against the ~~offt.~~ ^{offt.}, yet when the successful party brings debt on that judgment, he need not show his original cause of action.

This rule of declaring is founded on the general rule that the ~~offt.~~ ^{offt.} is not bound to declare what he is not bound to prove.

The judgment of a foreign court is examined, here, under the rule claiming, the benefit of the judgment, claiming to have it enforced.

But it is examinable in no other case

1. no. 34. 41.
2. no. 34. 41.
3. no. 34. 41.

So that if in an action brought here the
defendant should plead an bar the judgment of a for-
eign Court that would be conclusive. The distinc-
tion seems to be on this ground. The
thing it will count & substantiate itself in a court of law
examination the Court is engaged in. In that

Day 6.

The action or debt on judgment the
in ordinary cases the question of law is not
to be decided. But this is not a good plea
to debt on foreign judgment, because a for-
eign judgment is not a record. But it has
been determined, that where the plaintiff declares
upon a foreign judgment, as upon a record, it
did not vitiate the declaration, so the case
has it a record and be treated as such.

1. no. 34. 41.
6 Mar. 1757.
2 H. Bl. 410.
2 Bar. 211.

When an action is brought upon a for-
eign judgment the plaintiff may be compelled to
prove the law of the state in which the
judgment was rendered, for the Court are not
judicially acquainted with foreign laws, as
matters of fact, but there laws must be
proved as a matter of fact. This may be done
by the deposition of those acquainted with
the laws.

Therefore the present constitution as the
Court has adopted, our Court shall not
creedence shall be given to judgments in
other states and at the same time the origi-
nal cause of action shall be shown in
the last clause was not done.

Action of Debt.

Debt however is not the only action
that will lie on a foreign subject; as in
debt, up, is concurrent with it.

Day 4. 1. 6.

Case 4. 1. 6.

as in, actions on foreign subjects
interest may be recovered at an assize
rendered here.

It has been sometimes said in the books,
that whenever an action of debt or assize will lie,
an action of debt will also lie, but this is not
true, the former action will lie in many cases
where the latter will not. As if one man
says money to another he mistakes, the subject.
up will lie to recover it, but debt will not.
As in many other cases.

Case 6
2 Nov. 1000

This general rule however, if limited
to a certain class of cases, will stand sound.
If it be applied to cases of promises to pay
money & promises implied from contract can
be, and confined to those cases it will
be a correct rule. But there are many cases
in which ind. ass. will lie where there are
no contracts.

As a void judgment debt cannot be sup-
ported for a void judgment is a nullity. Thus
if I should promise to, & appear before
a court and confess judgment for to, this judgment
is void. And generally, whenever the judgment
is obtained by fraud in the judicial proce-
dure, the judgment is void.

Debt on Bonds & single Bills & recog-
nizance

So also if there should be a false writ for-
ged, and if the writ should have been
nothing & if the judgment is void.

2 Green 461

4th Decr

2 Will 341

2 Bl 487

1st 397

2d 990

2 Will 44

If a judgment is voided by a Court
having competent jurisdiction it is void.

In all such case, the whole matter
judgment void is shown in evidence.

It takes it to be the prevailing opinion
of the profession in Penn. that an assign-
ment obtained by foreign attachment, debt will
not lie. The reason assigned is that the object
of a foreign attachment is solely to draw the
debtor out of the hands of the debtor's
debtor the garnisher, the bill in the state of
Penn. is decided.

2 Pac 13

2 Bl 491

508. 184.

Comp. Di. 108.

For money secured by bond or single
bill the action of debt is the only & the
only.

This is also the appropriate action
as a recognizance. That being a bond of re-
cog. and thus differing from a common bond.
The debt is not in all cases the only ac-
tion which will lie as a recognizance, a
writ of se. fa. will sometimes lie.

Comp. Di. 198

The most proper action for what are
called due bills given for money is the action
of debt. Formerly ad. was brought in such
cases in an action, but the action of debt
is now adapted. A due bill is
the same as a single bill.

When a bond or other condition is made payable generally, without any time specified for payment, it is in legal effect payable on the day of the date. — Therefore a person who binds himself he may be sued immediately.

If a bond is given for the performance of a collateral act, the action of debt for the penalty, is the C. L. remedy. But if the condition is broken the whole penalty is forfeited at C. L. — Sometimes however there is a remedy in such cases, in C. L., for a specific performance of the collateral act condition on the bond, but the remedy at law is an action of debt for the penalty.

It has been held that in debt on a penal bond, damages may be given exceeding the penalty, and the debt & interest may be added if the condition should exceed the penalty. This however does not now appear to be law. It seems that the amount of the penalty is the *pro plus ultra* of the damages.

Our late law however have allowed interest on the penalty from the time of the forfeiture. But they have refused to allow damages for accretions in value where the penalty is exceeded. It seems reasonable that

2 H. 124.
O. 1096.

2 Bac. 2.

2 M. 888

Dauph. 49.

M. 826.

2228.

For M. 140.

M. 2228.

Contra

1 East 425.

1 M. 75.

2 M. 280.

2 M. 280.

4 East 506.

4 East 506.

284, 30.
284, 30.
284, 30.

shall intend on the receipt, or immediately
upon forfeiture that becomes a debt.

284, 30.
284, 30.

If the condition of a bond is that the
debtor shall render a just account of monies re-
ceived, non payment of the monies received is
a breach of the bond, and an action of debt
will lie.

If there is a covenant concluding with a
penalty, the covenantor has his election to
sue in damages for covenant broken, or in debt
for the penalty. His election does not extend
in all cases, for it is apparent that the coven-

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

antor has to have his election either to
reform, or pay the penalty, and an action
for the penalty, and will lie against him as
appears that the covenantor was to have his
election the covenantor will have his.

An action of debt will ^{not} lie against a
sheriff for collateral articles seized as an
execution and not sold for want of purchasers.
He cannot sell to purchasers with no bid.
And there is no transfer of the debt.

284, 30.
284, 30.

284, 30.
284, 30.

284, 30.
284, 30.

It has been said that if a sheriff returns
collateral articles seized, and estimate them
in his return at a sum sufficient to pay
the debt & costs & charges respect to the
return, debt will lie against him. This must
be on the ground that the debt is transferred.

284, 30.
284, 30.

284, 30.
284, 30.

Action of Debt.

to the sheriff. I doubt the propriety of the rule.

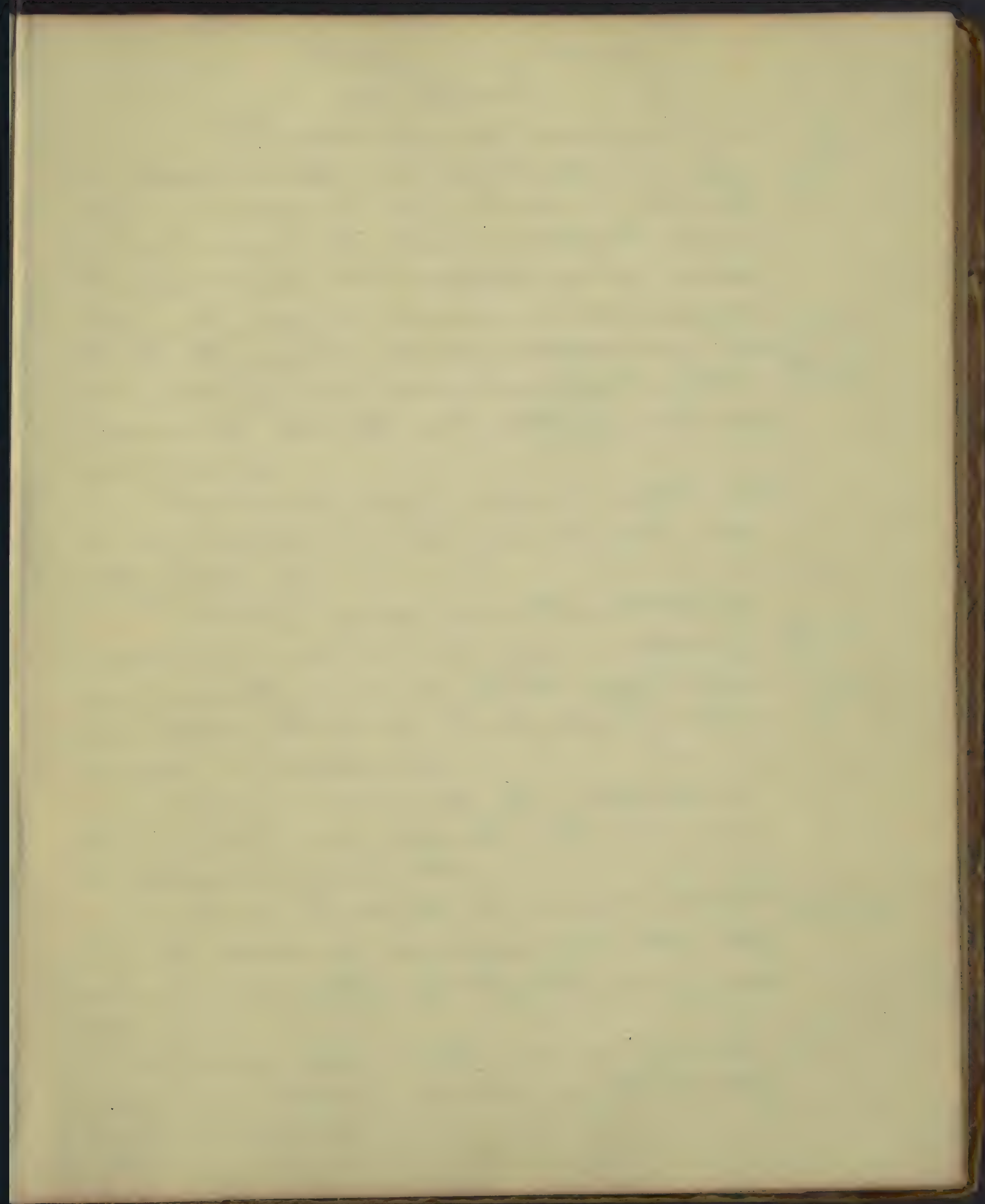
If however the sheriff having taken property & estimated it at a sum sufficient to discharge the debt & costs, returns that he has done so, and then returns that it was rescued out of his hands, I have no doubt but that debt would lie. tho I doubt whether it would in the former case, for the sheriff might have been compelled to sell.

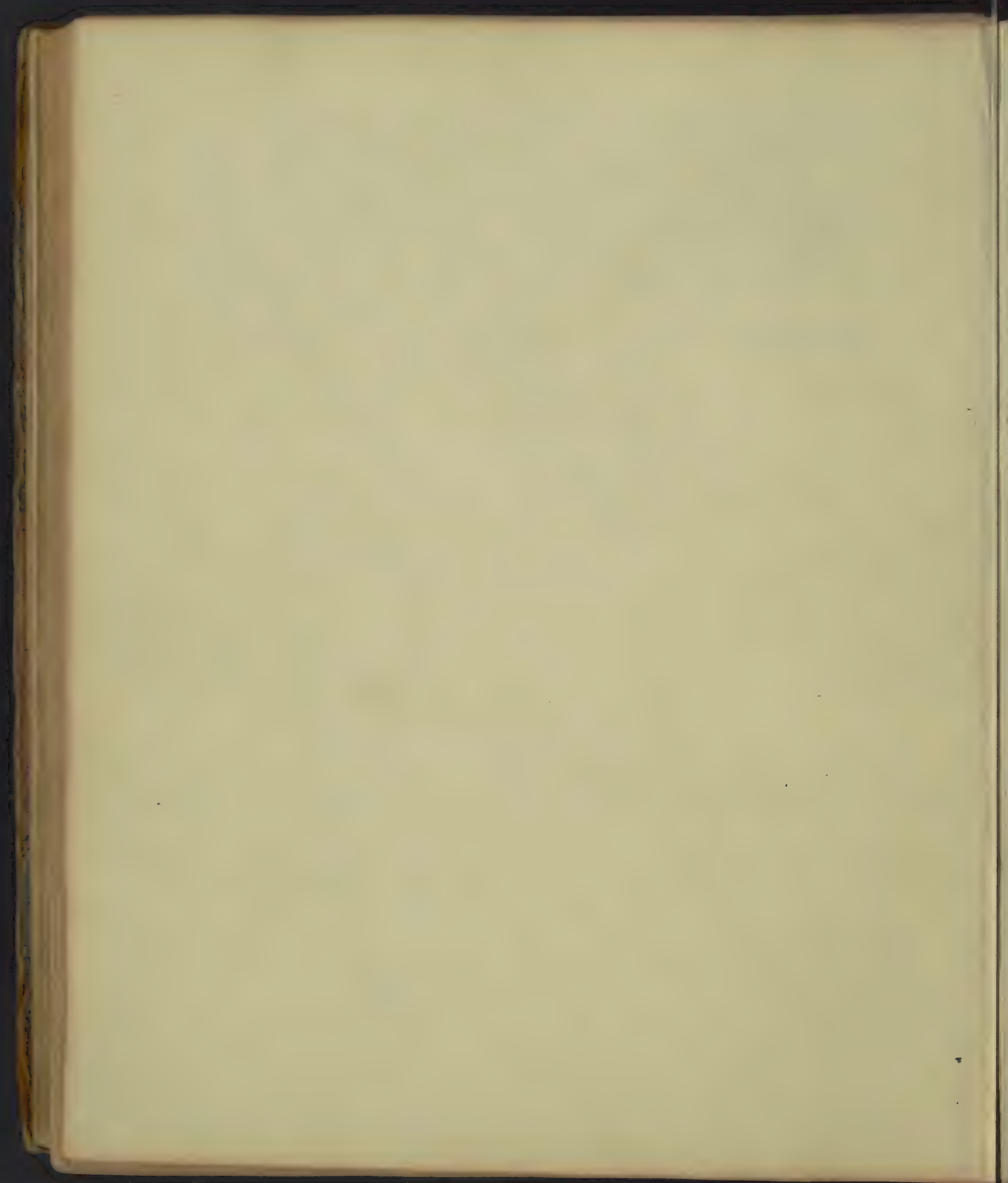
The action of debt lies also for rent reserved in a lease, tho sometimes an action of covenant broken is concurrent with it, but the former is the appropriate act.

But this action will not be brought against a tenant at sufferance. For such a tenant is strictly a wrongdoer, his possession is that of a wrongdoer, & not founded on a contract between him & the owner. —

in 1841, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

of branch, 481. 3rd of section, 234.





Detinue - & Notice and Request.

This action lies for the recovery of a personal chattel. But as it is affected, it is in nature as a bill in Detinue, because it furnishes a specific remedy. The remedy is specific because the judgment is for the restitution of the chattel itself. The judgment is however in the alternative. Part 285. For the judgment is for the chattel itself, but ^{Part 286.} it is added that he lost or destroyed so that ^{Part 287.} it cannot be said the deft shall pay the value costs, & damages.

The action lies for any personal chattel which can be identified or distinguished from all others of the kind.

Part for chattels which cannot be distinguished it will not lie, as for a bushel of corn, or gallon of wine &c but it will lie for ^{Part 288.} necessaries if they can be identified as being contained in a cask, bag &c.

Detinue will lie then for a bank note, piece of gold or silver provided that piece can be distinguished from others.

As to the chattels for which it will lie, the standard to determine this is that there should be something to distinguish or identify it.

This action lies in those cases, as to where the deft has obtained possession of the chattel by finding or delivery.

Jan 21
1844
1844

In such a situation the action is founded on an implied contract. It cannot be said to be founded on tort.

That it is founded in contract appears from the circumstances, but a counterpleader and a counter in detinue may be founded on an implication. That one count founded in tort, another in contract, ^{cannot be the same declaration} the general nature of the action is the same as that of debt.

1 Mac 28
2 Do 1
3 Do 1

That the action of detinue will not lie to recover money lent, even tho' it can be identified. For it was not intended to have been specifically recovered. For the money lent does not contain the property of the lender.

2 Buck 4
1 Hal 100

Detinue will lie in all cases of bailment in favor of the bailor against the bailee. It will lie where the purpose for which the goods were bailed is answered.

It will also lie against a finder of goods. And in all cases in which detinue will lie trover is concurrent with it. But this rule does not hold a converse.

This action is now almost altogether disused. It has been discontinued partly for the reason that the debt might charge the law. Another reason was for the great variety of counts assumed in describing the thing demanded. Some it may be the action is now rarely brought.

Power was never known to the 1st but appears
is founded on the 2nd. as we all ^{128 130} know
the great cliff, at which we the case. ^{131 132}
^{133 134} Vol. 98.

Notice and request.

According to the strict terms of the Bk
a request by the pff, as all actions proceed
sup in contract, is always necessary.

This request is however in the most cases
wholly fictitious, & the suit itself in most
cases is the only request made.

2 Plaz 794
12 Mas. 92.
3 Dall. 608.
Rom. Di. Hdr.
(5.70.

The form of declaring shew the request
to be necessary, as they always conclude
"altho' better than to be requested. Now where
the request is fictitious, this conclusion
of the declaration is sufficient.

In some cases also it is necessary in
order to support an action on contract, that
the pff must give notice of some fact to
the def, relating to the cause of action. And
where by the terms of the contract such
notice is necessary, it must be averred,
to have been given, in the declaration.

Independently of the terms of the con-
tract, where the fact or event on which
the demand is to arise, is as between the
parties, to be known to the pff only,
he must give notice to the def, of that
fact even tho' not mentioned in the terms
of the contract. In this case the necessity
of notice arises from the nature of the
contract, in the former case from the terms
of it. But where the def, has equal op-
portunity to become acquainted with the

15th 51

2402
140.467
140.42

Notice & request.

Such notice is not necessary.

I promise M. to pay him a certain sum of money on the day of his coming of age. M. is bound to give notice of the day.

But if I promise to give M. £100 on the day of his marriage, M. is not bound to give notice of the marriage, as that is a fact of which I might have obtained knowledge. L. 9. 2. 2.

I promise to deliver M. a certain quantity of corn, if M. approves of the quality, whether M. approves of it or not is known only to him, he therefore must give notice. But this contract is not binding itself to it. Illustrates the rule.

I bind myself to M. as a bond to account to M. before auditors appointed to M., it is necessary an action on the bond for M. to ask that he give notice to M. of the auditors he had appointed.

Examples might be greatly multiplied but it is unnecessary.

Wherever notice is necessary, it must appear to have been given in due time.

But if one contracts to pay money on an act declared by a stranger, here the plaintiff is not aware of the performance by the stranger, for the act has the same notice as the plaintiff.

1 Pol. 243
200

52 N. 67
367

Com. D.
104. 67
1 Pol. 243

1 Pol. 243
Com. D.
104. 67

1 Pol. 243
2 Pol. 243
2 Pol. 243
Com. D.
Condition.
L. 9.

Then I promise to pay \$100 on the re-
turn of 25 from beyond seas. It is not bound
to give notice of this return.

R. 100
202.082
8 Co. 926
4 Mod. 270

If one promises to give another a
bill of exchange to be annexed to a receipt, the
promisee is not bound to give notice of
the sum of the bill.

There are cases where the ^{must} ~~bill~~ ^{must} ~~bill~~ and
even a special request is an actual request
as contradistinguished from a fictitious one.

When one contracts to do a collateral
thing on demand, no time of perform-
ance being specified, the promisee cannot
bring an action, until he has made an ac-
tual demand or request.

By a collateral act is meant any act
except the payment of money. But why is it
not as reasonable to make a request where
money is payable, as well as where any act
collateral is to be performed. Money is
not a bulky article and the debtor ought
to seek the creditor, to discharge his debt.

{ In D. 100
300.
condition of
10.11
in D. 100
7 Lath 208.

But the case is very different where the
promise is to deliver a great quantity of
timber, for the promisee might enter and
take it off the spot and be obliged to pay
for him with a load of timber.

Again when there is a contract to
pay a collateral sum of money on request, ^{as in the case of a collateral}
an actual request is necessary. By a collateral ^{sum of money}
sum of money, it means the debt ^{to the creditor}
of a third person. Why is it necessary to have a
request there, as the debt is due from a third
person the request is a part of the considera-
tion. If the ^{debtor's} duty which the debt under
stood to perform to pay had been precedent
to the promise & independent of it, it
would have been necessary, for it
would not then enter into the consideration.

But when I promise to pay the debt of a
third person, there is no duty independent of that ^{of the third person}
express promise, which is the sole founda-
tion of my liability, so that the request is a
part of the consideration.

A hires a horse of B for a journey &
promises to pay an demand. B may main-
tain an action without an actual request.

But if B had promised A to pay for
the horse an actual request would have
been necessary, for his express promise was
the foundation of his liability, and the re-
quest is a part of the promise.

The rule that an express promise
by one to perform his own duty, or pay
his own debt, does not render ^{an actual request}
necessary, does not hold where he undertakes

to pay in collateral acts. *Trif. 13* & has been
 13 Jack 208. *not to pay for the hire of the horse since*
 Com. Di on demand, where the obligation to pay comes
 14 Nov. 89. is founded on the express contract, which
 15 2. 133. was to deliver it on request.

When according to these distinctions a
 special request is necessary to be answered,
 the time and place of the request, must
 Com. Di also be answered, in the declaration. For in
 16 89
 17 182 89 request is a traversable fact, and it is
 18 182 a rule that a traversable fact must be
 laid with time and place.

But this rule does not apply to ca
 ses, where the general issue involves a sta
 ment of the request, as in subject of
 against the endorser of a bill of Exch., the
 holder must give notice to the endorser
 of the dishonor of the bill, and answer it
 but need not aver time and place, because
 he cannot take a

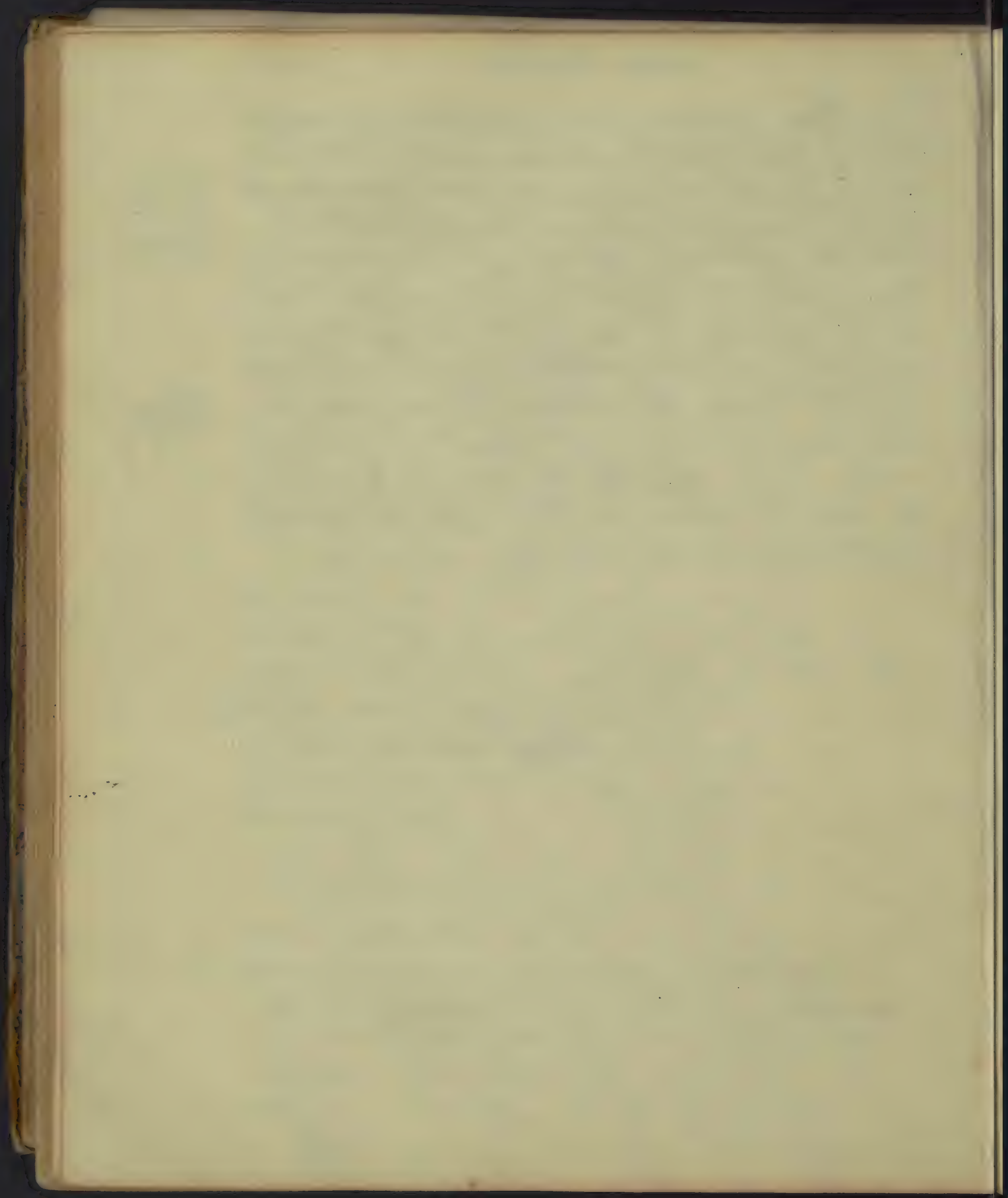
The want of averment of a special re
 quest, when that request is necessary, is a
 16. 1. 158 ^{averment} radical & incurable defect, & cannot be
 17 182 74 aided by a verdict. — It is a general
 Com. Di. 85 rule that where there is a contract to do a
 18 182 99 ~~collateral~~ any thing on demand, the
 debt cannot discharge himself by a tender
 without request, where request is necessary
 at all events.

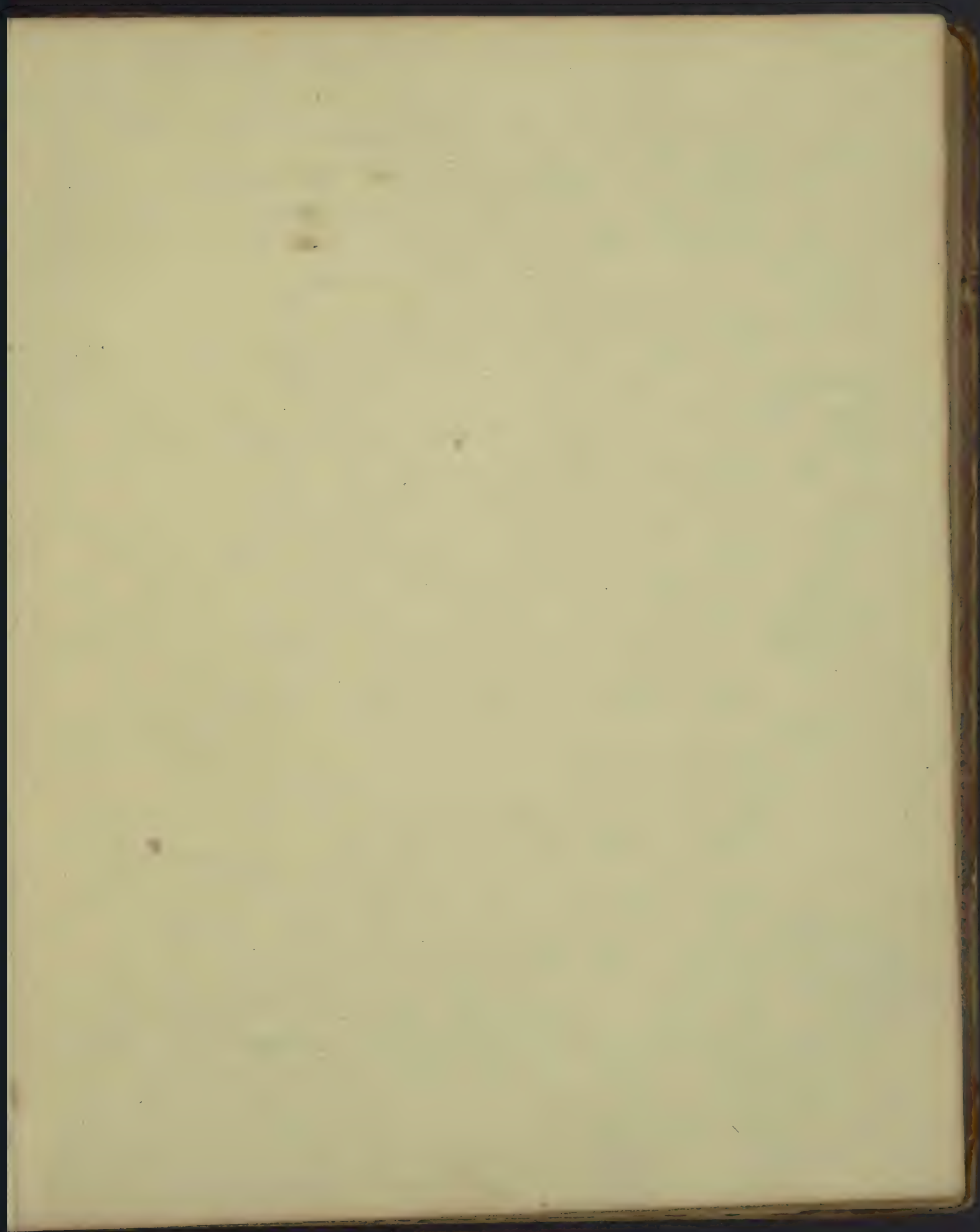
Notice & Request.

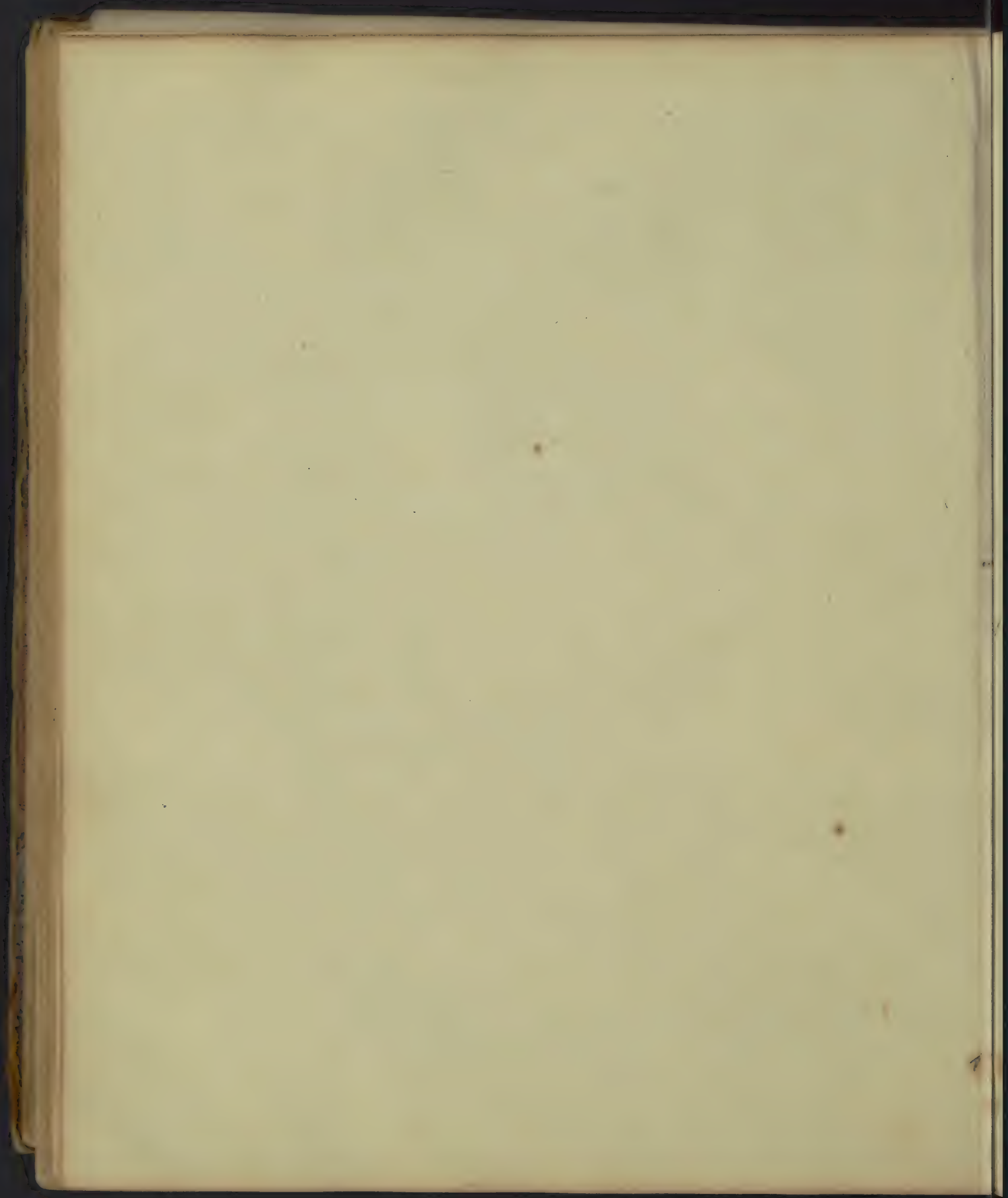
Thus a merchant gives a due bill for a certain amount payable at his store in goods on demand. Now a special demand is necessary, because the merchant cannot discharge himself without by a tender without demand, for he does not know what to tender, the holder of the bill has his election of the goods. The merchant can never be liable without request in this case.

If however the selection of goods was to have been made by a stranger the merchant ought to have requested the stranger to select for him to tender, so that a special request would not have been necessary.









Action of Covenant broken.

This action is always founded on a covenant & claims a recovery for some breach of it. The action seems for this reason to be called the action of covenant broken, because the claim is founded upon a covenant supposed to be broken.

A covenant as understood by the Ct is a contract written and sealed, and may be either by indenture or poll.

Every covenant is a contract or agreement. But every contract is not a covenant. Contracts constitute a genus of which covenants is a species.

If the covenant is drawn in form of an indenture, between A & B, it is sufficient to bind A that he has sealed it, whether B has sealed it or not, for the instrument purports to be executed by both — yet it will bind him who did execute it.

Fitch v. Matine
Merrim. 340.
How. C. 244.
245.
Mac. 525

2. Cha. 212.
Cot. Tr. 266.

The usual remedy at law for a breach of covenant lies in damages. tho if there is a covenant to pay a sum certain debt will lie, & the sum can be recovered in numbers.

So also where the damages can by an averment be reduced to certainty, the action of debt will lie upon breach of the covenant to receive that sum certain. — This if an instrument be drawn in this form: "I covenant to give J. S. \$100 at the end of one year. Debt will lie. or if I covenant to pay J. S. 2 dollars for a load, for as many loads of wood as he will deliver to me" now

But. R. 10.
2. Rev. 427.

Covenant

overning how many loads he brought, the sum is reduced, to a certainty, and then will be also in this case.

Feb 27 But where a covenant is to do some specific so.
 128
 136 as to make a conveyance, or execute a deed, the

1 Mac 526 most common & proper remedy is to bring a bill
in Ch^y for specific performance. This stile does not
mean that the action of covenant broken will not
lie at law. The covenantor may have his election.
May his bill he gets a specific performance, —
by the action at law he recovers damages
for non performance.

On the other hand, where upon breach of covenant the covenantor appears entitled to damages only, a bill in Equity will not lie upon it. The meaning of the rule is that where mere

1 Publ. 27 damages would be an adequate remedy a bill
2 Mr. Bl. 24, ^{139.} will not lie, for damages cannot be ascertained
3 W. 540 ed by the Chancellor. and if they could, dam.

ed by the Chancellor. And if they could, dam-
ages being an adequate remedy, it is improper
to go to Ch. C. Now even in these cases if the
relief prayed in Equity is merely consequential
or collateral to a ground of relief properly maintain-
able in Ch. C. that Ch. C. will retain a bill
upon the consent. Thus suppose that A sues B
in an action of consent broken at law. B files a

2 Nov 8. 20. Bill in Equity for relief upon that action on
18. 19. the ground that said. Now A. may file his cross
1 Mac 89. bill in Equity to restore the same and be
5 26

Covenant.

by this bill pray for relief on the covenant, & the Ct
shall award to the covenantor his damages. That
is the Chancellor will direct an issue to ascertain
the damages - this is not the practice in Com
Law the Ct itself will ascertain the damages.
e.g. here never directs an issue at Law.
they will either judge themselves or appoint a
committee.

All covenants are of two kinds viz
Covenants in Deed & covenants in Law.

Covenants in Deed are express covenants
are expressly mentioned & recited in the agreement
between the parties.

Covenants in Law are such as are raised or im-
plied by Law, that is they are implied covenants. ^{4 Co. 80.}
Covenants may be implied in various ways. Thus ^{Corp. Di. 266.}
^{Inst. 384.} if A leases land to B, the law implies a covenant that
A has title, has a good right to lease, and that
the lessee shall quietly enjoy during the term.

This division arises from the nature & form of the
agreement. Covenants in Law then are different
from covenants in deed in this respect - that the
latter are founded on the words used as amount-
ing to an express covenant. Thus if A makes a
lease to B in this form "I covenant &c to lease
land to B.L. reserving \$100 rent" tho these words
are the words of the lessor it amounts to a cov-
enant on the part of the lessee, that he will
pay the rent.

Covenant.

On the other hand covenants in Law are implied not from the phraseology of the instrument, but from the nature of the express contract or agreement. Thus the words "give and grant" raise a covenant in Law, though the donor has good title, but no covenant certainly does not arise from the meaning of the words "give and grant". The words do not mean that the donor has title. The covenant arises then from the nature of the agreement, and not of the words used.

Suppose that A makes a lease to B thus "I give and demise to B a tract of land for 20 years, and suppose that A has no title. B can immediately maintain the action of covenant broken against A tho there was no express covenant that A had title. Further the law implies that B shall quietly enjoy for 20 years, now if B is evicted before the expiration of 20 years, he may maintain his action on the implied covenant for quiet enjoyment. Thus far as to this distinction between express and implied covenants.

All covenants are again divided into such as are Real and Personal. This is not a subordinate, but a coordinate division.

A Covenant real is one by which a party binds himself to pass or assure things real, thus if A covenants to convey freehold estate to B at a future time.

A Personal Covenant is one which is annexed to the person of the covenantor, or concerns persons only - thus if A covenants to build

5 Do 14.
Baill 198.
Palmer 288.
4 Do 86.

Went to
Baill 98
1 Hall 220
Corp Di 217.

Filed Nature. Pres.
in 145. 243.
1 Inst. 189.
5 Co 10. 11.

Covenant - broken

a house for B or to pay money to B.

As the distinction counts in Law and Equity is derived from the nature of the agreement. The distinction between counts in Law and Equity is founded altogether upon the subject of the agreement.

It is a rule with regard to the creation of covenants, that not set form of words is necessary to create them, any words in a recited instrument shewing the concurrence of the parties to an agreement may create a covenant. Thus it is a lease says

"I give and demise to B such a tract of land, re-

Mac 321.

1 Roll. 517.

West. 10.

1 Hen. 4th.

2 Mod. 85.

1 Salk. 241.

B is not

William

ceiving the annual rent of \$100. but as to this

example I remark that Chaucant Williams says

that a covenant in Law, I think he is clearly in the

a mistake, for here the covenant is raised from the

words in the instrument.

A covenant is to the object or effect of it

may be as to something past, present or future -

Thus a man may covenant with another that he

has done a certain act, and if he has not done it his

covenant is broken. Thus if A wants to sell land in

surrounded by B, he may covenant that he has re-

moved that incumbrance.

The object of a covenant may also be present,

Plowd. B.

207a.

thus one covenants that he is well seized. But

generally covenants relate to something future - as

a covenant of warranty - all executory agreements made

under seal are covenants to do something in future.

Covenants in Law may be either restrained or

Covenant.

excluded by the express agreement of the parties tho' in certain cases the law raises an implied covenant yet the parties may exclude this implication or restrain it expressly. *facit express tacitum.*

I observed that on a grant or demise there was implied a covenant that the grantor had good title, but if there follows an express covenant more narrow than that which the law would otherwise imply, the implied covenant is excluded or restrained. Thus suppose an express covenant in a lease by the grantor against any disturbance by the lessor or any claimants under him. Now there is no implied covenant to quiet enjoyment because there is an express covenant. If then in this case the lessee should be evicted by a stranger or any one not claimant under the lessor, the lessor could have no action of covenant broken against the lessor.

There is a rule laid down generally in *Br Chas and Esq* "that upon an implied covenant in a lease an action of covenant will not lie for an eviction by a stranger." This rule is not properly expressed. It relates to a tortious entry by a stranger, and in such case the action will not lie. The rule is intended doubtless to apply to this case only, if not it cannot be saved.

The recital in a deed of a former agreement creates a covenant. Thus if in a deed between A & B it is recited that "whereas it has been agreed

1. Co. 145.
2. Co. 80. b.
3. Br Chas 675.
Esq. De. 275

2. Co. 80
Br Chas 214.
Esq. De. 268.

1. Co. 22.
2. Br Chas 265.
Esq. De. 208

Covenant.

That I shall pay \$100 to B, this recital will bind A to pay the money to B; the deed confirms the prior agreement.

But the set words are not necessary to create an express covenant, yet if the word covenant is not used, there must be some other words which import an agreement. The words need not be apt and appropriate, but they must import an agreement, or there can be no express covenant. — Thus suppose

one a lease for years covenants to repair provided the lessor shall furnish the necessary timber now ^{1 Mot. 518:} ^{Exp. De. 257.} the proviso is not a covenant on the part of the lessor. Not that he will furnish the timber, it is only a qualification of the lessee's covenant. But if it stood thus, provided and it is agreed that the lessor shall furnish the timber — here is a covenant on the part of the lessor.

If the lessor executes a bond conditioned for the performance of the covenants contained in his deed or lease, that bond extends to the implied as well as the express covenants of that lease. 4 Co 30 b

There is no doubt that a clause in the form of a proviso may amount to a covenant, but as a general rule a mere proviso does not amount to a covenant, but merely to a condition, in which the estate granted may be defeated.

Again, whenever a stipulation in a deed is in the nature of a defeasance, it does not amount to a covenant. Now the condition of a

Construction of Covenants.

1 Mol 518. mortgage deed is called a defeasance, and the object
 1 Sid 48. of it is to defeat or destroy the preceding grant.
 2 Com. Di. 560. it does not constitute a covenant, but furnishes
 a ^{mere} matter of defence against a covenant or stip-
 ulation preceding it — and a proviso, considered as
 a mere proviso is of the same nature.

To take the common case of a penal bond, & executes a bond to B in the penalty of £100 to be void if A performs certain labour for B, now this proviso or condition does not amount to a covenant on the part of A that he will perform, the covenant is merely this, that if he does it, it will defeat the penalty.

Construction of Covenants.

1 Mol 219. The construction of covenants has always been
 Hould. C. liberal — that is the meaning of the parties is
 140. to be sought without a strict adherence to posi-
 1 Inst. 145. tive rules as in case of deeds or grants executed.
 1 Bac 529. A covenant is generally nothing more than an
 executory agreement under seal, and according to
 this rule it may and sometimes does happen
 that a literal performance will not satisfy
 the covenant — for the construction is liberal.

2 Bli 7. That which satisfies the intention of the parties
 1 Sid 48. & that only is a performance in law. A literal
 270. performance then as the case may be will not
 1 Mac 529. discharge the covenant. Thus, A held a bond against
 B, he covenanted to deliver up that bond on
 a certain day, but in the mean time he died
 when the bond, & recovered, and then delivered

Construction of Concrements.

it up on the day. Here was a literal performance
even still the Dr. Lett I shall not be sure and

I saw a man covenant with the Egyptians
 upon the land all the timber at the side of the
 house - but he took it into his head he w^d have
 the timber and then left it, but the Pt said his
 covenant was broken. Another I covenanted to
 deliver Mr a certain piece of broad cloth, and cut
 it up and delivered it, but it was holden that he
 was liable on his covenant, tho' he made a ^{Uthia} ^{Mac 4. 24.}
 performance. Again a bremer covenanted to deliver ^{9. 40.}
 all the grain from his bremer, he did deliver ^{Shinnar. 39. 10.}
 them but mixed ashes with them. ^{Uthia. 2. 5.}
^{Exp. Di. 2. 1.}

So on the other hand, a substantial performance tho' not a literal one will discharge the covenant. Thus A covenanted that his son before the age of consent should marry the daughter of B. the son did marry, but after he had attained the age of consent he repented this marriage was according to the intention of the parties and was holden to be a good performance of the covenant.

Where words in a covenant are uncertain, they are to be expounded most strongly against the covenantor. This rule is not confined to covenants, see it explained title Contracts.

It is a general rule in exparations all contracts, That when a party binds himself to do or act at a time appointed, he cannot be liable on that cover. or contract, till that time or day arrives. . . But There is one exception

Construction of Covenants.

5th 212
7th 187.
Mac. 210. 211.

In its general rule, if one covenants convey land to another at such a day, & before that day arrives he conveys the same land to another, the covenant is operative to bind him, & the covenantor is liable immediately, before the day arrives. This rule is unreason-
able, and I think somewhat wrong, for it is not impossible that the covenantor should repurchase the land and then perform.

In some cases a clause in the form of a mere exception will amount to a covenant, and in others it will not. The distinction is this—Where a lease or conveyance is of a given sub-
ject except a certain part of it, the exception is not a covenant that the grantee will not touch it; if he should enter upon it, he is not liable on the covenant, but merely as a trespasser. The exception is a matter of mere description to show what is to pass and what not. Thus suppose that A owns a farm consist-
ing of 10 enclosures, & makes a lease to B of his farm excepting enclosure No 10.

in 11th 637. 690.
can 211. title is of a thing or profit to be derived out of
Wade C. 2.
Carr 242.
Tulk 196.
Hornod. 190.
Mac. C. 238.

But on the other hand where the exception
amounts to a covenant. Thus if A conveys to B
a farm excepting a right of way over it,
this amounts to a covenant on the part of A
that he will not disturb it in the enjoyment
of that right of way. To suppose that a lease
to B of a house excepting a certain room binds a

Construction of covenants

certain right of passage to it, this is the same as a conveyance back by it to it of that passage.

There is a difference in construction between express & implied covenants, the former are con- 3 Mer 1639
sidered more strictly than the latter. — It is re- 3 East 259
solved in 3 D. R. 259.

care, however to distinguish this class of cases where the condition cannot be performed by inevitable accident, from those where the covenant is to do what is physically impossible under all circumstances. — Thus suppose a lease of a house for 20 years covenants to pay rent 2 Ltr 763
during the whole term unconditionally, now 15 R. 708.
he is bound to pay the rent for the whole 210.
term even if the house was destroyed by 2 D. R. 1477.
lightning the next day after the lease was made. Exp. Di. 270.

There has been some discussion in our books whether in the last case a Ct. of Eq would relieve the lessee. In one instance before 2 D. R. relief was granted, but in other cases there was no decision. I see not upon what principle the Ct. could extend relief. They cannot control the law, tho' they may take some advantage of some circumstances which the law cannot notice. In this very case the law lays it down that he cannot be relieved. Don Manguie is of this opinion, & he takes the ground, that where the equity is equal the law must prevail, tho' in the last instance we would think the equity was not equal — but upon reflection, it will

Construction of Covenants.

Amb. 619.
 1 B. & C. 189.
 1 Mbl 306
 271.

 seem I think that the equity is equal, the owner of the house does bear a loss, for he loses his reversion, the house is the lessee's for 20 years - and why should the lessee suffer, by the loss of the reversion property, for the house is his property during the term. I should therefore incline to the opinion that a Bit of Equity could act on a principle seen in the labor.

In the case of implied covenants, the construction is more liberal. Thus upon a lease for life or years, where there is an implied covenant on the part of the lessee not to commit waste, if waste is occasioned by inevitable accident, the lessee is not liable. tho' if he has covenanted against that species of waste, he would undoubtedly have been liable.

3 B. & C. 1839.
 Dorr 289.
 1 Mbl 506.

 This ^{distinction} ~~rule~~ is said to be a diversity in the rule of construction & so I have treated it, but perhaps it may not respect the rule of construction. Now, the difference arises from this distinction that in the one case there is an express insurance in the other not.

It is a general rule that express covenants are not discharged by any collateral matter - thus in the case before-mentioned of a lease of a house, which is destroyed before the lease is out. There is an exception to this general rule. Thus if one covenants to do an act, which the subsequent law of the land renders unlawful, the contract is discharged.

Construction of Covenants

by this law which is a collateral act. So also if
one covenants not to do an act, which afterwards ^{Path 198}
the law makes it his duty to do. Thus suppose ^{Exp. Di. 270}
a citizen of the U. S. had contracted to deliver a sermon
in Europe at such a time, and suppose an em-
bargo laid, performance is now unlawful and
the contract is annulled. — Or suppose one cove-
nants to be a recruit in another and then is called
out in the militia.

It is laid down in the books that covenants
so far as they respected any subject matter, are ^{1 Lev 68}
confined in operation to that which is in being at ^{1 Vent 225.}
the time of making the covenant. — Thus if a lessee ^{32. M 377.}
covenants to pay all taxes upon a house, he is
bound to pay those taxes only which are estab-
lished by law at the time of making the lease,
not those imposed afterwards.

If one lease a personal chattel to another &
covenants that the bailee shall have the use of
it for a certain time, it is a question whether the
lessor is bound to keep it in repair, if within ^{1 Vent 20. 44.}
that time it is worn out or becomes useless; ^{1 Sid. 229.}
or whether he is liable on his covenant. The latter ^{1 Saund. 321.}
opinion seems to be that he is not liable, but
there have been different opinions.

The assignment of a chose in action when
made by deed amounts to a covenant on the part
of the assignor, that the assignee shall have the
benefit of it, not only that the assignee shall

Constructor or Covenant

use the name of the assignor to recover the debt but that the assignee shall have the benefit of it entirely. If B.L. however chooses in action are not assignable, if a bond is given to it, he cannot at B.L. transfer the legal interest in that bond to B.

Balk. 125.
2 Ves 540.
Ld. Ka. 685.
1242.
3 Heble. 204
2 P. W. 608.

Let the contract of assignment when by deed is good between the parties. It follows then that if the assignor releases the debt he becomes liable to the assignee on a breach of his covenant. Because the deed of assignment amounts to a covenant that the assignee shall have the beneficial interest. The most usual practice in Conn in such a case is, for the assignee to sue the assignor for bond. But the assignor may be insolvent and it may be necessary to have a remedy against the original debtor. Now if the debtor after notice of the assignment, receives a discharge from the assignor, the course in Eng is to file a bill in Ch. against the original debtor. But our Ct in Conn say there is a remedy at law, and here therefore there is no remedy in Ch.

Cr. Eliz. 352.
1 Show. 45
1 Holl 939.
2 Lev 431.
2 Mac 265

A covenant by a creditor not to sue his debtor or within a limited time is no bar to an action brought against the debtor within that time. If the creditor does bring the action he is liable to be sued on his covenant, but it is merely a covenant, it is no release or defeasance. The reason why it is not a discharge is that

Construction of Covenants.

if it were a discharge at all it would be perfect. ^{2 G. H. 1000.}
 not, because the action is personal, but this is not ^{1317. 255.}
 the intention of the parties. ^{1317. 100.}
^{1317. 255.}
^{1317. 100.}

If however such a covenant makes part of
 the instrument creating the debt, as by memoran-
 dum entered, it will prevent a suit at law
 till the time expires. Thus if A promises to pay
 £100 on demand provided it is agreed that no
 action shall be brought on the note within one
 year. Now here is clearly nothing more or less than
 a debt in present solvendum in future, and
 of course it has the effect of suspending the right
 of action till that time expires. The rule however
 applies to no other than personal rights, that is
 the rule that a covenant not to sue within a cer-
 tain time does not work a bar to the action. ^{2 H. Bl. 4.}

If then a man covenants not to sue on a right
 to a debt, this is a temporary suspension of that
 right.

But a covenant not to sue at all is a bar to an
 action in all cases, whether the right is real
 or personal. Suppose I hold a bond against
 B, & execute a covenant never to sue upon it
 this bond is discharged forever. For if the credi-
 tor should sue on the bond & recover, he would
 be liable in that sum on his covenant, and then
 the parties would be in statu quo.

But a covenant never to sue one of two
 joint and several obligors, is no bar as to the
 other nor as I conceive is it any bar to the cov-

8 G. H. 255
 6 G. H. 737
 22 Ma. 590.
 1 Lev. 162.

1 G. H. 422
 8 G. H. 176.
 485
 2 Bulst. 290.
 2 Ch. 512

Construction of Covenants

covenant himself. It is a covenant merely, even when the action is between the covenantor & covenantee if his co-obligor cannot plead it in bar; it follows I think that he the covenantee ^{can} not, and by the supposition the co-obligor cannot. The reason of this diversity is that where there is a sole obligor, the intention is to abandon the debt, but where there are two obligors there is no such intention. It leaves the presumption that the covenantor intends to collect the debt out of the co-obligor, if not out of the covenantee.

If however the creditor should covenant never to sue one of two ^{joint} obligors, he abandons his remedy as to both, for he cannot sue one alone, he must sue both or neither but a release a technical release tho' given to one only of two joint & several obligors, will be a discharge of both, for such a technical release is a discharge of one and therefore must be a discharge of all.

In applying these rules, it is necessary, to be cautious & observe the difference, between a covenant not to sue properly so called, & a defeasance or release. For if one grants or agrees with his debtor that he shall not be sued within such a time, or if he is, that the obligation shall be void or the debt forfeited, the agreement may be pleaded in bar to the action, if it is brought within the time, for this is a conditional release or defeasance.

LD Ma. 590.
8 T. W. 168.
6 B. & C. 118.
11 Mod. 252.
12 D. 551.
1 B. & C. 72

1 Holl. 939.
1 B. & C. 210.
1 B. & C. 123.
1 B. & C. 619.
1 Law 2, 6.
1 B. & C. 230.
2 Shaw 2, 40

Construction of Covenants.

A covenant not to sue a delinquent in a foreign country, is a good bar to a suit in a foreign country. This is not a total release but a local one. Thus where a crew of foreign seamen under a firemaster entered into a covenant not to sue him except in his country, it was held that he could not be sued in a foreign country. 22 Mass. 281. 2 H. Bl. 603. Com. H. 139. Lath. 298.

It seems to be clear however that one can not by covenant in any sort of contract exclude himself from resorting to a proper Ct of Justice in his own country, for this is considered as apposed to sound policy. 2 H. Bl. 606.

There are certain covenants used in deeds of conveyance which I will now mention. In all deeds of conveyance except quit claims, there are two covenants, one of seisin the other of warranty, or of good title and of quiet enjoyment. In such conveyances these covenants are usually expressed, if not they are implied. — In deeds of release, or quit claims there are no such covenants either expressed or implied. 4 Ps. 808. 1 H. Bl. 519. 520. Esp. Di. 266. — 268.

A covenant of seisin or of good title relates to the present; of course if the fact is otherwise the covenantor may be sued instantly, as soon as the covenant is broken there is a right of action, nothing more is necessary for the covenantee than to show that the covenantor was not seized at the time. Cr. 1190. 569. 9 Ps. 65. Esp. Di. 299.

Construction of Covenants.

11 Elix 919.
Lut. 21: 30.
Hill 5.

But on a covenant of Warranty or of quiet enjoyment no action will lie until the covenant is broken. If the grantee is not disturbed the grantor is not liable even tho' he has no title.

9 Bo. 60

22 140.

22 299.

2 West 12.

contra not law.

In declaring upon a covenant of seisin the plaintiff must state who was seized, it is suff. if he avers that the covenantor was not seized. It is incumbent on the covenantor to show that he was seized. The onus probandi lies upon him. And if he shows a prima facie or presumptive title in himself, the plff must fail, unless he shows a better title in another.

8 East 491

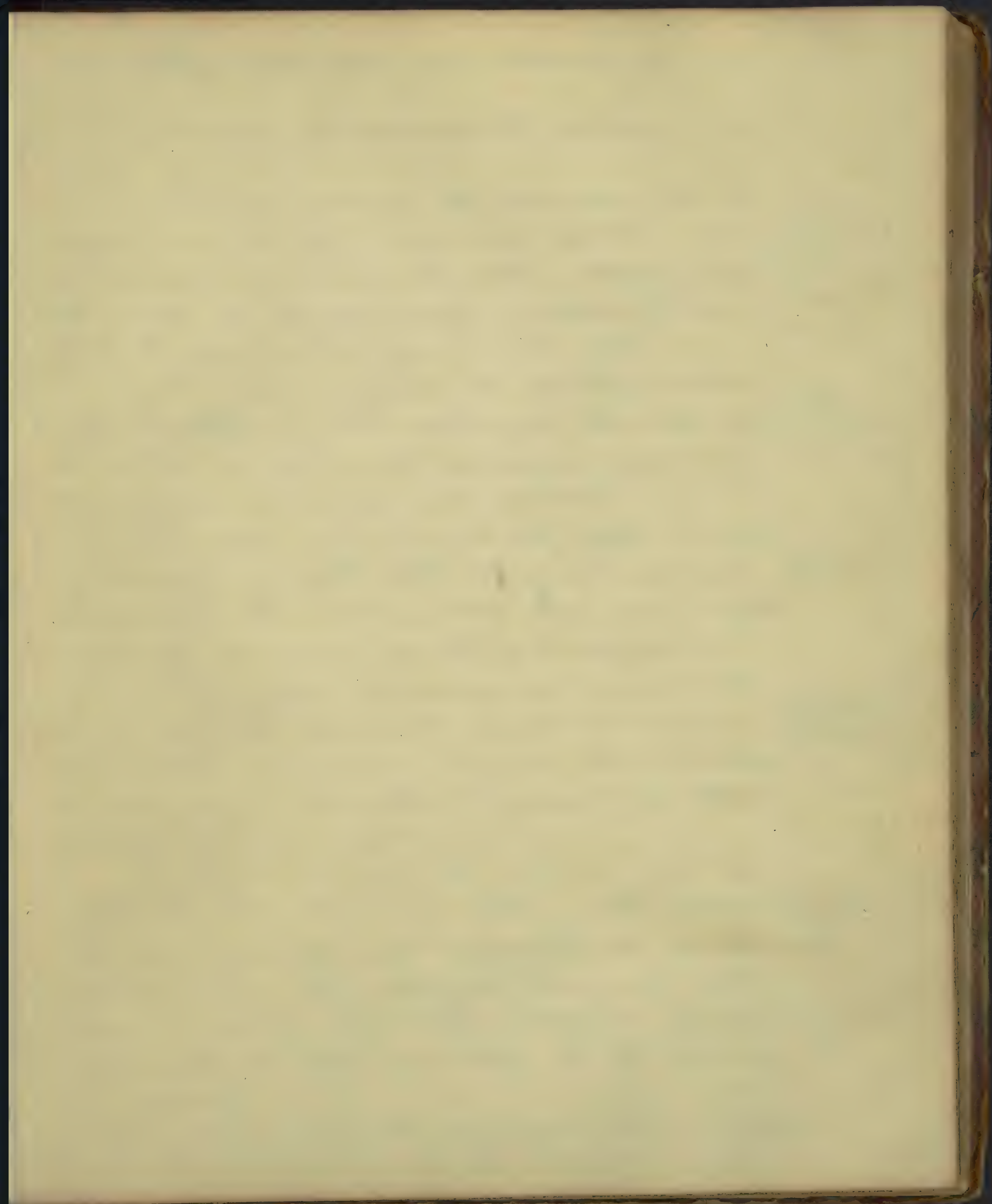
4 John. 10.

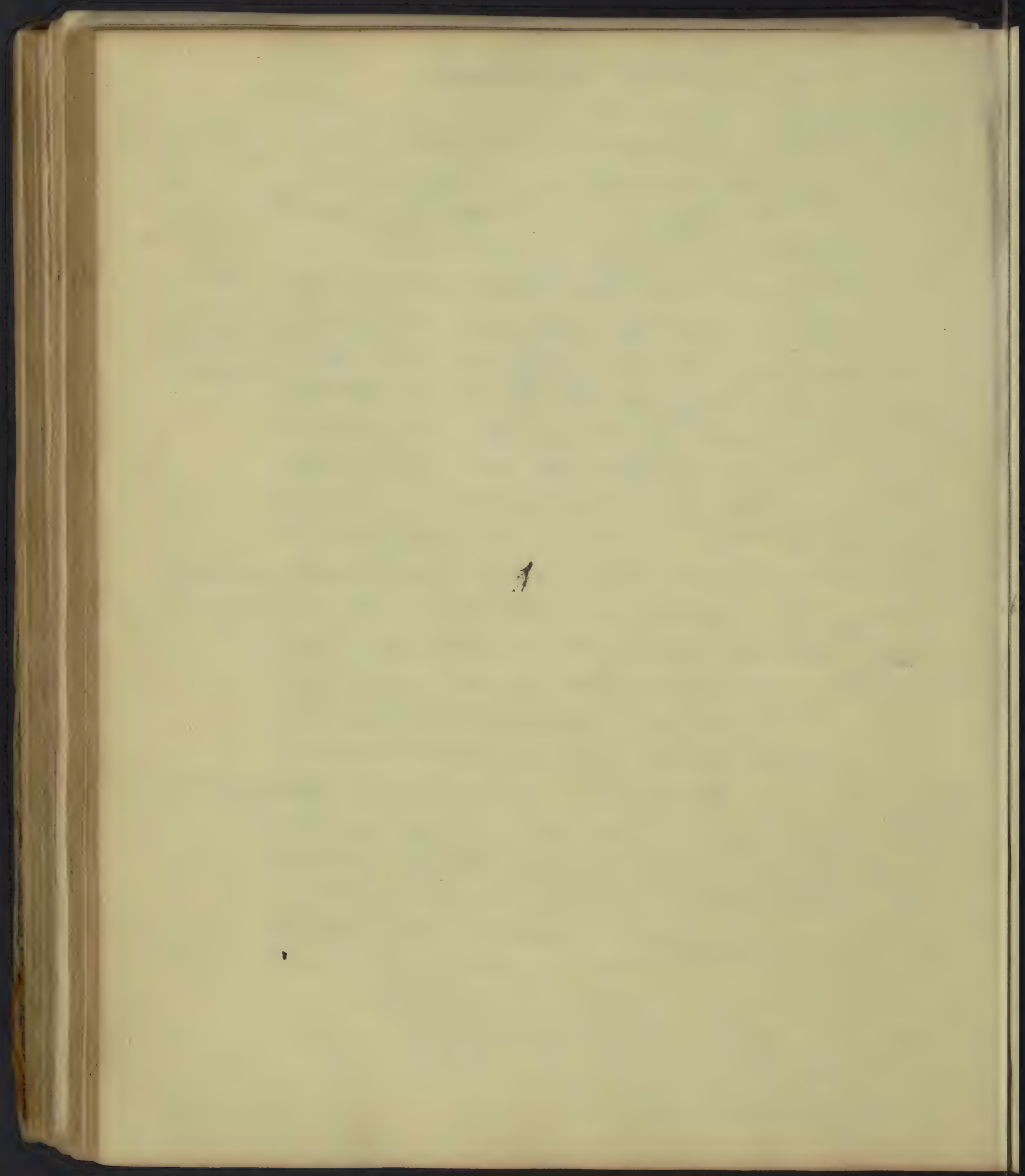
In existing incumbrance upon the subject of conveyance, amount to a breach of the covenant of seisin, unless the incumbrance is excepted.

But where the covenant of seisin is broken by a mere incumbrance, there is an exception to the rule of Declaration laid down. The breach must be stated specially showing the nature of the incumbrance. What the incumbrance is.

2 Map. 403.
407.

This is necessary, because it is indispensable that he state the land to be incumbered & if so he must of course state the nature of the incumbrance. continued on sheet 200.





Covenant of seisin and Warranty.

On a covenant of warranty the following rules must be observed.

It must appear in the declaration that the action was not only under claim by title or possession but also under older title. Alleging that the covenor had lawful title is not sufficient, but he must declare a good & older title.

It is not indispensable to allege formally in the declaration that the covenor's title was older, but it must appear in some way as by comparison of dates &c.

It is not necessary for the plaintiff to state under what specific title the covenor entered. Nor whether the existing party was seized in fee or for life &c is not required to be mentioned.

It is indeed laid down in one of the books that the covenantee must show under what title the covenor claimed, but that is to mean only that he must show that the title was good & older.

The reason why the action must be stated to have been under title, is because the covenant does not extend to the tortious acts of others. If a stranger having no title commits injury he is liable in trespass, but the covenantee can have no action on the covenant of warranty.

An averment in the declaration that the title was acquired by a lawful law, is not sufficient.

as we have been cited & yet have good title,
for it may have been by collusion.

4 Co. 80. b

R. Bar. 91.

It is unreasonable that he should show evidence
under good & elder title.

Rep. 213. 2.

Altho' a covenant of warranty does not
generally extend to the tortious acts of others
still a person may bind himself by covenant
even against the tortious acts of others.

And when the party covenants against
the acts of a particular person the covenant
extends to the tortious acts of that person. So

Plat. 90.

R. Bar. 212.

100. 431.

110. 400.

That there is an essential difference between
a covenant to warrant against all persons
whosoever, and one against one particular person.
The rule is fully established, tho' the construction
appears forced.

Of the warrantor himself distinct the
grantor even by a tortious act under the claim
of title is liable on his covenant. Now in
this case the general rule of declaring does not
hold, it is not necessary here to declare an
error under good & elder title, for it is
not necessary to prove it, and a party is not
bound to allege any thing not necessary to be
proved. — And this rule respecting the liability
of the covenantor when he is guilty of a tortious
error obtains also even where the covenant
is against lawful error, only. And I take
the reason to be that it is not compellable
him to defend himself by averring that his own
act was unlawful.

100. 641.

100. 641.

Rep. 213.

200. 420.

Covenants of warranty and seisin

And I will here observe that an action brought by the lord himself answers the rule, tho' he can recover by a stranger does not. The two last rules hold unless there is a tortious eviction by any person included in the covenant as there is in "20". In this case the place of the original covenant.

A covenant of warranty by an exec^r or such person general, extends only to his own acts committed by persons claiming under him. The reason of the rule is that the exec^r covenant is liable only in his representative capacity.

There has been in this country great litigation about what should be the rule of damages on a covenant of seisin and one of warranty. In this the rule of damages in the former case is different from that in the latter. Thus in *12 Geo. 2. 108* in a recovery on a covenant of seisin the plaintiff recovers the consideration and interest only.

On a covenant of warranty the plaintiff recovers in *1 Geo. 2. 108* the consideration, the interest & the damages of eviction, i.e. the costs of the ejectment.

The reason of the diversity is that the plaintiff in a covenant of seisin does not claim an eviction but upon an original defect of title, but in a covenant of warranty the case is different, & it is but just that he

10 Geo. 2. 108.
1 Geo. 2. 108.
1 Geo. 2. 108.

10 Geo. 2. 108.
1 Geo. 2. 108.

12 Geo. 2. 108.
1 Geo. 2. 108.
1 Geo. 2. 108.
1 Geo. 2. 108.
1 Geo. 2. 108.
1 Geo. 2. 108.

1 Geo. 2. 108.
1 Geo. 2. 108.

Covenants of warranty & seisin.

Perby 5
2 Mass R 440
3 Df 545

should recover the cost of seisin.

On a bond the plaintiff recovers the value of the land at the time of seisin & his damages. The diversity of our rule from that of the Co is founded in good reason, as the value of land is then the same as it was many generations since, but here the value of land is perpetually changing.

Waller 1779
Cap Dr 295
2 Mass R 295
2 Johns 1.

On a covenant of seisin no action can be maintained except by the covenantee himself or his representatives, & his assignees cannot sue on the covenant, for ~~the~~ as the covenant is broken the moment it is executed, it gives the assignee a right of action. would be to make an assignment of a chose in action.

5 Co 15b.
17a

but the rule is otherwise in a covenant of warranty, for here the covenant is not broken until eviction.

2 Saund 1718.
3 P. R. 186
4 East 504
5 Johnson 49.

If in an action upon a covenant of seisin it appears that the plaintiff has acquired a title after the action brought, it is no bar to the action, tho' undoubtedly it would come to a mitigation of damages.

When an action of ejectment is brought against the lessee he ought to notify the grantor of the pendency of the action, that the latter may appear & defend his title. he is not bound to, but should for his own security. This is called in Co, voucher in the grantor when.

Covenants of seisin and warranty.

The action relates to a freehold. The debt is bound to make as good a defence as he can, if the grantor makes none.

In Eng the writ or voucher is very common and used only in actions on freehold. But here in actions both real & mixed. This notice or summons, is called a writ of voucher.

1 Mac 532
1 Inst 101
260a

This vouching in the grantor is what the grantee should never admit on account of his own security. For if the grantor is vouched and the action goes against the grantee, he may recover off the grantor merely by showing this action. But if the grantor is not vouched in this case the grantee will be under the necessity of proving his whole case over again.

Quit claim deeds contain neither the covenant of seisin nor of warranty. It is a mere bargain of hazard on the part of the grantee, who assumes the risk of a want of title.

Still however the grantor may be liable for want of title where he has procured a fraud on the grantee, in pretending to a title which he has not, here an action of fraud will lie. There has been no Eng decision on this point to my knowledge, but it has been decided in New York.

2 Day 188
2 Condra
2 Pains 190
Or see title 38
Chapter 5 2005
1 Inst 260.

Covenant to pay money by instalments

It is necessary to covenise by themselves, covenant to pay money by instalments.

On a bond with condition to pay a certain sum by instalments an action of debt will lie on the non payment of the first instalment. ^{10th 118} ^{Pla 515. 812.} ^{10th 558.} ^{Wils 80} ^{Paul. N. D. 158.} now speaking of a penal bond, so that upon the first failure the whole penalty is forfeited, and at last the whole penalty is recoverable.

But upon a single bill is a bond without a penalty, ^{it is otherwise} for upon that, an action of debt cannot be maintained until the last instalment becomes payable. There is great obscurity attending this subject.

A single bill is precisely the form of the penal part of a penal bond, it is a bill without a condition. Upon a single bill an action of debt only can be brought, and there is no such thing as apportioning the aggregate sum in an action of debt. So that the action cannot be brought until the last instalment is due. Here by the terms of the bond the whole no penalty is forfeited upon the non payment of the first instalment. The word bond is often used incorrectly for a single bill which has greatly contributed to this obscurity attending this subject. ^{1 Inst. 47b} ^{242b} ^{10 B. 128b} ^{Paul. N. D. 158} ^{1 B. 148}

But if annual rent is reserved payable semiannually or quarterly, an action of debt will lie for the first instalment.

Covenants to pay money by Instalments

reservations; if rent are considered as distinct debts, accruing at the respective times; if not.

If a covenant is made on a promissory note is given for the payment of an aggregate sum by instalments, an action of covenant broken in the first case, and assumpsit in the latter. ^{Guide} ^{Spencer v. 110} ²⁰⁷ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ ⁶⁰⁶ ⁶⁰⁷ ⁶⁰⁸ ⁶⁰⁹ ⁶¹⁰ ⁶¹¹ ⁶¹² ⁶¹³ ⁶¹⁴ ⁶¹⁵ ⁶¹⁶ ⁶¹⁷ ⁶¹⁸ ⁶¹⁹ ⁶²⁰ ⁶²¹ ⁶²² ⁶²³ ⁶²⁴ ⁶²⁵ ⁶²⁶ ⁶²⁷ ⁶²⁸ ⁶²⁹ ⁶³⁰ ⁶³¹ ⁶³² ⁶³³ ⁶³⁴ ⁶³⁵ ⁶³⁶ ⁶³⁷ ⁶³⁸ ⁶³⁹ ⁶⁴⁰ ⁶⁴¹ ⁶⁴² ⁶⁴³ ⁶⁴⁴ ⁶⁴⁵ ⁶⁴⁶ ⁶⁴⁷ ⁶⁴⁸ ⁶⁴⁹ ⁶⁵⁰ ⁶⁵¹ ⁶⁵² ⁶⁵³ ⁶⁵⁴ ⁶⁵⁵ ⁶⁵⁶ ⁶⁵⁷ ⁶⁵⁸ ⁶⁵⁹ ⁶⁶⁰ ⁶⁶¹ ⁶⁶² ⁶⁶³ ⁶⁶⁴ ⁶⁶⁵ ⁶⁶⁶ ⁶⁶⁷ ⁶⁶⁸ ⁶⁶⁹ ⁶⁷⁰ ⁶⁷¹ ⁶⁷² ⁶⁷³ ⁶⁷⁴ ⁶⁷⁵ ⁶⁷⁶ ⁶⁷⁷ ⁶⁷⁸ ⁶⁷⁹ ⁶⁸⁰ ⁶⁸¹ ⁶⁸² ⁶⁸³ ⁶⁸⁴ ⁶⁸⁵ ⁶⁸⁶ ⁶⁸⁷ ⁶⁸⁸ ⁶⁸⁹ ⁶⁹⁰ ⁶⁹¹ ⁶⁹² ⁶⁹³ ⁶⁹⁴ ⁶⁹⁵ ⁶⁹⁶ ⁶⁹⁷ ⁶⁹⁸ ⁶⁹⁹ ⁷⁰⁰ ⁷⁰¹ ⁷⁰² ⁷⁰³ ⁷⁰⁴ ⁷⁰⁵ ⁷⁰⁶ ⁷⁰⁷ ⁷⁰⁸ ⁷⁰⁹ ⁷¹⁰ ⁷¹¹ ⁷¹² ⁷¹³ ⁷¹⁴ ⁷¹⁵ ⁷¹⁶ ⁷¹⁷ ⁷¹⁸ ⁷¹⁹ ⁷²⁰ ⁷²¹ ⁷²² ⁷²³ ⁷²⁴ ⁷²⁵ ⁷²⁶ ⁷²⁷ ⁷²⁸ ⁷²⁹ ⁷³⁰ ⁷³¹ ⁷³² ⁷³³ ⁷³⁴ ⁷³⁵ ⁷³⁶ ⁷³⁷ ⁷³⁸ ⁷³⁹ ⁷⁴⁰ ⁷⁴¹ ⁷⁴² ⁷⁴³ ⁷⁴⁴ ⁷⁴⁵ ⁷⁴⁶ ⁷⁴⁷ ⁷⁴⁸ ⁷⁴⁹ ⁷⁵⁰ ⁷⁵¹ ⁷⁵² ⁷⁵³ ⁷⁵⁴ ⁷⁵⁵ ⁷⁵⁶ ⁷⁵⁷ ⁷⁵⁸ ⁷⁵⁹ ⁷⁶⁰ ⁷⁶¹ ⁷⁶² ⁷⁶³ ⁷⁶⁴ ⁷⁶⁵ ⁷⁶⁶ ⁷⁶⁷ ⁷⁶⁸ ⁷⁶⁹ ⁷⁷⁰ ⁷⁷¹ ⁷⁷² ⁷⁷³ ⁷⁷⁴ ⁷⁷⁵ ⁷⁷⁶ ⁷⁷⁷ ⁷⁷⁸ ⁷⁷⁹ ⁷⁸⁰ ⁷⁸¹ ⁷⁸² ⁷⁸³ ⁷⁸⁴ ⁷⁸⁵ ⁷⁸⁶ ⁷⁸⁷ ⁷⁸⁸ ⁷⁸⁹ ⁷⁹⁰ ⁷⁹¹ ⁷⁹² ⁷⁹³ ⁷⁹⁴ ⁷⁹⁵ ⁷⁹⁶ ⁷⁹⁷ ⁷⁹⁸ ⁷⁹⁹ ⁸⁰⁰ ⁸⁰¹ ⁸⁰² ⁸⁰³ ⁸⁰⁴ ⁸⁰⁵ ⁸⁰⁶ ⁸⁰⁷ ⁸⁰⁸ ⁸⁰⁹ ⁸¹⁰ ⁸¹¹ ⁸¹² ⁸¹³ ⁸¹⁴ ⁸¹⁵ ⁸¹⁶ ⁸¹⁷ ⁸¹⁸ ⁸¹⁹ ⁸²⁰ ⁸²¹ ⁸²² ⁸²³ ⁸²⁴ ⁸²⁵ ⁸²⁶ ⁸²⁷ ⁸²⁸ ⁸²⁹ ⁸³⁰ ⁸³¹ ⁸³² ⁸³³ ⁸³⁴ ⁸³⁵ ⁸³⁶ ⁸³⁷ ⁸³⁸ ⁸³⁹ ⁸⁴⁰ ⁸⁴¹ ⁸⁴² ⁸⁴³ ⁸⁴⁴ ⁸⁴⁵ ⁸⁴⁶ ⁸⁴⁷ ⁸⁴⁸ ⁸⁴⁹ ⁸⁵⁰ ⁸⁵¹ ⁸⁵² ⁸⁵³ ⁸⁵⁴ ⁸⁵⁵ ⁸⁵⁶ ⁸⁵⁷ ⁸⁵⁸ ⁸⁵⁹ ⁸⁶⁰ ⁸⁶¹ ⁸⁶² ⁸⁶³ ⁸⁶⁴ ⁸⁶⁵ ⁸⁶⁶ ⁸⁶⁷ ⁸⁶⁸ ⁸⁶⁹ ⁸⁷⁰ ⁸⁷¹ ⁸⁷² ⁸⁷³ ⁸⁷⁴ ⁸⁷⁵ ⁸⁷⁶ ⁸⁷⁷ ⁸⁷⁸ ⁸⁷⁹ ⁸⁸⁰ ⁸⁸¹ ⁸⁸² ⁸⁸³ ⁸⁸⁴ ⁸⁸⁵ ⁸⁸⁶ ⁸⁸⁷ ⁸⁸⁸ ⁸⁸⁹ ⁸⁹⁰ ⁸⁹¹ ⁸⁹² ⁸⁹³ ⁸⁹⁴ ⁸⁹⁵ ⁸⁹⁶ ⁸⁹⁷ ⁸⁹⁸ ⁸⁹⁹ ⁹⁰⁰ ⁹⁰¹ ⁹⁰² ⁹⁰³ ⁹⁰⁴ ⁹⁰⁵ ⁹⁰⁶ ⁹⁰⁷ ⁹⁰⁸ ⁹⁰⁹ ⁹¹⁰ ⁹¹¹ ⁹¹² ⁹¹³ ⁹¹⁴ ⁹¹⁵ ⁹¹⁶ ⁹¹⁷ ⁹¹⁸ ⁹¹⁹ ⁹²⁰ ⁹²¹ ⁹²² ⁹²³ ⁹²⁴ ⁹²⁵ ⁹²⁶ ⁹²⁷ ⁹²⁸ ⁹²⁹ ⁹³⁰ ⁹³¹ ⁹³² ⁹³³ ⁹³⁴ ⁹³⁵ ⁹³⁶ ⁹³⁷ ⁹³⁸ ⁹³⁹ ⁹⁴⁰ ⁹⁴¹ ⁹⁴² ⁹⁴³ ⁹⁴⁴ ⁹⁴⁵ ⁹⁴⁶ ⁹⁴⁷ ⁹⁴⁸ ⁹⁴⁹ ⁹⁵⁰ ⁹⁵¹ ⁹⁵² ⁹⁵³ ⁹⁵⁴ ⁹⁵⁵ ⁹⁵⁶ ⁹⁵⁷ ⁹⁵⁸ ⁹⁵⁹ ⁹⁶⁰ ⁹⁶¹ ⁹⁶² ⁹⁶³ ⁹⁶⁴ ⁹⁶⁵ ⁹⁶⁶ ⁹⁶⁷ ⁹⁶⁸ ⁹⁶⁹ ⁹⁷⁰ ⁹⁷¹ ⁹⁷² ⁹⁷³ ⁹⁷⁴ ⁹⁷⁵ ⁹⁷⁶ ⁹⁷⁷ ⁹⁷⁸ ⁹⁷⁹ ⁹⁸⁰ ⁹⁸¹ ⁹⁸² ⁹⁸³ ⁹⁸⁴ ⁹⁸⁵ ⁹⁸⁶ ⁹⁸⁷ ⁹⁸⁸ ⁹⁸⁹ ⁹⁹⁰ ⁹⁹¹ ⁹⁹² ⁹⁹³ ⁹⁹⁴ ⁹⁹⁵ ⁹⁹⁶ ⁹⁹⁷ ⁹⁹⁸ ⁹⁹⁹ ¹⁰⁰⁰ ¹⁰⁰¹ ¹⁰⁰² ¹⁰⁰³ ¹⁰⁰⁴ ¹⁰⁰⁵ ¹⁰⁰⁶ ¹⁰⁰⁷ ¹⁰⁰⁸ ¹⁰⁰⁹ ¹⁰¹⁰ ¹⁰¹¹ ¹⁰¹² ¹⁰¹³ ¹⁰¹⁴ ¹⁰¹⁵ ¹⁰¹⁶ ¹⁰¹⁷ ¹⁰¹⁸ ¹⁰¹⁹ ¹⁰²⁰ ¹⁰²¹ ¹⁰²² ¹⁰²³ ¹⁰²⁴ ¹⁰²⁵ ¹⁰²⁶ ¹⁰²⁷ ¹⁰²⁸ ¹⁰²⁹ ¹⁰³⁰ ¹⁰³¹ ¹⁰³² ¹⁰³³ ¹⁰³⁴ ¹⁰³⁵ ¹⁰³⁶ ¹⁰³⁷ ¹⁰³⁸ ¹⁰³⁹ ¹⁰⁴⁰ ¹⁰⁴¹ ¹⁰⁴² ¹⁰⁴³ ¹⁰⁴⁴ ¹⁰⁴⁵ ¹⁰⁴⁶ ¹⁰⁴⁷ ¹⁰⁴⁸ ¹⁰⁴⁹ ¹⁰⁵⁰ ¹⁰⁵¹ ¹⁰⁵² ¹⁰⁵³ ¹⁰⁵⁴ ¹⁰⁵⁵ ¹⁰⁵⁶ ¹⁰⁵⁷ ¹⁰⁵⁸ ¹⁰⁵⁹ ¹⁰⁶⁰ ¹⁰⁶¹ ¹⁰⁶² ¹⁰⁶³ ¹⁰⁶⁴ ¹⁰⁶⁵ ¹⁰⁶⁶ ¹⁰⁶⁷ ¹⁰⁶⁸ ¹⁰⁶⁹ ¹⁰⁷⁰ ¹⁰⁷¹ ¹⁰⁷² ¹⁰⁷³ ¹⁰⁷⁴ ¹⁰⁷⁵ ¹⁰⁷⁶ ¹⁰⁷⁷ ¹⁰⁷⁸ ¹⁰⁷⁹ ¹⁰⁸⁰ ¹⁰⁸¹ ¹⁰⁸² ¹⁰⁸³ ¹⁰⁸⁴ ¹⁰⁸⁵ ¹⁰⁸⁶ ¹⁰⁸⁷ ¹⁰⁸⁸ ¹⁰⁸⁹ ¹⁰⁹⁰ ¹⁰⁹¹ ¹⁰⁹² ¹⁰⁹³ ¹⁰⁹⁴ ¹⁰⁹⁵ ¹⁰⁹⁶ ¹⁰⁹⁷ ¹⁰⁹⁸ ¹⁰⁹⁹ ¹¹⁰⁰ ¹¹⁰¹ ¹¹⁰² ¹¹⁰³ ¹¹⁰⁴ ¹¹⁰⁵ ¹¹⁰⁶ ¹¹⁰⁷ ¹¹⁰⁸ ¹¹⁰⁹ ¹¹¹⁰ ¹¹¹¹ ¹¹¹² ¹¹¹³ ¹¹¹⁴ ¹¹¹⁵ ¹¹¹⁶ ¹¹¹⁷ ¹¹¹⁸ ¹¹¹⁹ ¹¹²⁰ ¹¹²¹ ¹¹²² ¹¹²³ ¹¹²⁴ ¹¹²⁵ ¹¹²⁶ ¹¹²⁷ ¹¹²⁸ ¹¹²⁹ ¹¹³⁰ ¹¹³¹ ¹¹³² ¹¹³³ ¹¹³⁴ ¹¹³⁵ ¹¹³⁶ ¹¹³⁷ ¹¹³⁸ ¹¹³⁹ ¹¹⁴⁰ ¹¹⁴¹ ¹¹⁴² ¹¹⁴³ ¹¹⁴⁴ ¹¹⁴⁵ ¹¹⁴⁶ ¹¹⁴⁷ ¹¹⁴⁸ ¹¹⁴⁹ ¹¹⁵⁰ ¹¹⁵¹ ¹¹⁵² ¹¹⁵³ ¹¹⁵⁴ ¹¹⁵⁵ ¹¹⁵⁶ ¹¹⁵⁷ ¹¹⁵⁸ ¹¹⁵⁹ ¹¹⁶⁰ ¹¹⁶¹ ¹¹⁶² ¹¹⁶³ ¹¹⁶⁴ ¹¹⁶⁵ ¹¹⁶⁶ ¹¹⁶⁷ ¹¹⁶⁸ ¹¹⁶⁹ ¹¹⁷⁰ ¹¹⁷¹ ¹¹⁷² ¹¹⁷³ ¹¹⁷⁴ ¹¹⁷⁵ ¹¹⁷⁶ ¹¹⁷⁷ ¹¹⁷⁸ ¹¹⁷⁹ ¹¹⁸⁰ ¹¹⁸¹ ¹¹⁸² ¹¹⁸³ ¹¹⁸⁴ ¹¹⁸⁵ ¹¹⁸⁶ ¹¹⁸⁷ ¹¹⁸⁸ ¹¹⁸⁹ ¹¹⁹⁰ ¹¹⁹¹ ¹¹⁹² ¹¹⁹³ ¹¹⁹⁴ ¹¹⁹⁵ ¹¹⁹⁶ ¹¹⁹⁷ ¹¹⁹⁸ ¹¹⁹⁹ ¹²⁰⁰ ¹²⁰¹ ¹²⁰² ¹²⁰³ ¹²⁰⁴ ¹²⁰⁵ ¹²⁰⁶ ¹²⁰⁷ ¹²⁰⁸ ¹²⁰⁹ ¹²¹⁰ ¹²¹¹ ¹²¹² ¹²¹³ ¹²¹⁴ ¹²¹⁵ ¹²¹⁶ ¹²¹⁷ ¹²¹⁸ ¹²¹⁹ ¹²²⁰ ¹²²¹ ¹²²² ¹²²³ ¹²²⁴ ¹²²⁵ ¹²²⁶ ¹²²⁷ ¹²²⁸ ¹²²⁹ ¹²³⁰ ¹²³¹ ¹²³² ¹²³³ ¹²³⁴ ¹²³⁵ ¹²³⁶ ¹²³⁷ ¹²³⁸ ¹²³⁹ ¹²⁴⁰ ¹²⁴¹ ¹²⁴² ¹²⁴³ ¹²⁴⁴ ¹²⁴⁵ ¹²⁴⁶ ¹²⁴⁷ ¹²⁴⁸ ¹²⁴⁹ ¹²⁵⁰ ¹²⁵¹ ¹²⁵² ¹²⁵³ ¹²⁵⁴ ¹²⁵⁵ ¹²⁵⁶ ¹²⁵⁷ ¹²⁵⁸ ¹²⁵⁹ ¹²⁶⁰ ¹²⁶¹ ¹²⁶² ¹²⁶³ ¹²⁶⁴ ¹²⁶⁵ ¹²⁶⁶ ¹²⁶⁷ ¹²⁶⁸ ¹²⁶⁹ ¹²⁷⁰ ¹²⁷¹ ¹²⁷² ¹²⁷³ ¹²⁷⁴ ¹²⁷⁵ ¹²⁷⁶ ¹²⁷⁷ ¹²⁷⁸ ¹²⁷⁹ ¹²⁸⁰ ¹²⁸¹ ¹²⁸² ¹²⁸³ ¹²⁸⁴ ¹²⁸⁵ ¹²⁸⁶ ¹²⁸⁷ ¹²⁸⁸ ¹²⁸⁹ ¹²⁹⁰ ¹²⁹¹ ¹²⁹² ¹²⁹³ ¹²⁹⁴ ¹²⁹⁵ ¹²⁹⁶ ¹²⁹⁷ ¹²⁹⁸ ¹²⁹⁹ ¹³⁰⁰ ¹³⁰¹ ¹³⁰² ¹³⁰³ ¹³⁰⁴ ¹³⁰⁵ ¹³⁰⁶ ¹³⁰⁷ ¹³⁰⁸ ¹³⁰⁹ ¹³¹⁰ ¹³¹¹ ¹³¹² ¹³¹³ ¹³¹⁴ ¹³¹⁵ ¹³¹⁶ ¹³¹⁷ ¹³¹⁸ ¹³¹⁹ ¹³²⁰ ¹³²¹ ¹³²² ¹³²³ ¹³²⁴ ¹³²⁵ ¹³²⁶ ¹³²⁷ ¹³²⁸ ¹³²⁹ ¹³³⁰ ¹³³¹ ¹³³² ¹³³³ ¹³³⁴ ¹³³⁵ ¹³³⁶ ¹³³⁷ ¹³³⁸ ¹³³⁹ ¹³⁴⁰ ¹³⁴¹ ¹³⁴² ¹³⁴³ ¹³⁴⁴ ¹³⁴⁵ ¹³⁴⁶ ¹³⁴⁷ ¹³⁴⁸ ¹³⁴⁹ ¹³⁵⁰ ¹³⁵¹ ¹³⁵² ¹³⁵³ ¹³⁵⁴ ¹³⁵⁵ ¹³⁵⁶ ¹³⁵⁷ ¹³⁵⁸ ¹³⁵⁹ ¹³⁶⁰ ¹³⁶¹ ¹³⁶² ¹³⁶³ ¹³⁶⁴ ¹³⁶⁵ ¹³⁶⁶ ¹³⁶⁷ ¹³⁶⁸ ¹³⁶⁹ ¹³⁷⁰ ¹³⁷¹ ¹³⁷² ¹³⁷³ ¹³⁷⁴ ¹³⁷⁵ ¹³⁷⁶ ¹³⁷⁷ ¹³⁷⁸ ¹³⁷⁹ ¹³⁸⁰ ¹³⁸¹ ¹³⁸² ¹³⁸³ ¹³⁸⁴ ¹³⁸⁵ ¹³⁸⁶ ¹³⁸⁷ ¹³⁸⁸ ¹³⁸⁹ ¹³⁹⁰ ¹³⁹¹ ¹³⁹² ¹³⁹³ ¹³⁹⁴ ¹³⁹⁵ ¹³⁹⁶ ¹³⁹⁷ ¹³⁹⁸ ¹³⁹⁹ ¹⁴⁰⁰ ¹⁴⁰¹ ¹⁴⁰² ¹⁴⁰³ ¹⁴⁰⁴ ¹⁴⁰⁵ ¹⁴⁰⁶ ¹⁴⁰⁷ ¹⁴⁰⁸ ¹⁴⁰⁹ ¹⁴¹⁰ ¹⁴¹¹ ¹⁴¹² ¹⁴¹³ ¹⁴¹⁴ ¹⁴¹⁵ ¹⁴¹⁶ ¹⁴¹⁷ ¹⁴¹⁸ ¹⁴¹⁹ ¹⁴²⁰ ¹⁴²¹ ¹⁴²² ¹⁴²³ ¹⁴²⁴ ¹⁴²⁵ ¹⁴²⁶ ¹⁴²⁷ ¹⁴²⁸ ¹⁴²⁹ ¹⁴³⁰ ¹⁴³¹ ¹⁴³² ¹⁴³³ ¹⁴³⁴ ¹⁴³⁵ ¹⁴³⁶ ¹⁴³⁷ ¹⁴³⁸ ¹⁴³⁹ ¹⁴⁴⁰ ¹⁴⁴¹ ¹⁴⁴² ¹⁴⁴³ ¹⁴⁴⁴ ¹⁴⁴⁵ ¹⁴⁴⁶ ¹⁴⁴⁷ ¹⁴⁴⁸ ¹⁴⁴⁹ ¹⁴⁵⁰ ¹⁴⁵¹ ¹⁴⁵² ¹⁴⁵³ ¹⁴⁵⁴ ¹⁴⁵⁵ ¹⁴⁵⁶ ¹⁴⁵⁷ ¹⁴⁵⁸ ¹⁴⁵⁹ ¹⁴⁶⁰ ¹⁴⁶¹ ¹⁴⁶² ¹⁴⁶³ ¹⁴⁶⁴ ¹⁴⁶⁵ ¹⁴⁶⁶ ¹⁴⁶⁷ ¹⁴⁶⁸ ¹⁴⁶⁹ ¹⁴⁷⁰ ¹⁴⁷¹ ¹⁴⁷² ¹⁴⁷³ ¹⁴⁷⁴ ^{1475</}

2 Baebn
151.124.105.

2 Bent 193

Poul. 297

9 Lalk 108

2 Will. 295

covenant may attach as many breaches as he
pleases, and recover for all that there are.
But in an action on a penal bond, a plaintiff
is not permitted to assign more than one breach.
if he does the debt may demur, but in an action
on covenant broken the plaintiff ought for his
own security; one breach of a penal bond works a
forfeiture of the whole, so that one only is necessary
to be assigned. This rule for assigning breaches on a
penal bond, has been abrogated in Conn. by
an old stat. & now also in Eng.

So that now in Conn. upon the nonpayment
of an instalment on a penal bond the plaintiff
can only recover compensation for the default
of the payment of the first instalment and
not the whole penalty as at C. L. there is
also now the "Eng. Law". So that now the plaintiff

may assign as many breaches as a penal
bond as on a simple bill. But as Eng. always
intended for the relief of debt in penal bonds,
there was some difficulty at first between
them and C. L. & now. So that the distinction
between a penal bond and a simple bill is
in these respects

How far the representatives of a Covenantor are bound by his covenants.

In this subject the general rule is that the exec^s & adm^s of a covenantor are bound by the covenant tho' they are not named. There is an exception in this rule where the covenant is fiduciary, there the exec^s & adm^s are not bound. Contacts of this sort are found in personal confidence reposed in the covenantor. If however the covenantor is guilty of a breach of the covenant during his life, the exec^s & adm^s are liable for the damages. The meaning of the rule is that they are not bound to perform it.

140. 148.
2 D. W. 197.
1 Mol. 514.
R. Clin. 583.
1 Liff. 216.
Com. Di. 116.
Covenant B. 11

And an ancestor dying seized in fee may bind his heir by his covenant, or more correctly speaking bind the inheritance in the hands of his heir.

2 Kerr. 213.
Dyer 357. a

And it is a general rule, that covenants real bind the heirs of the covenantor & descend to the heirs of the covenantee. And the heir of a covenantee in a covenant real may sue upon it, tho' not named, provided the covenant runs with the land, and appears to have been intended to continue after the covenantor's death.

File L. N. 11. 11. 11.
Merrim 343
1 Mol. 515.
1 Mol. 515.
2 Lev. 91.
1 Kerr. 505.
1 Kerr. 515.
1 Kerr. 515.

There has been considerable doubt in Court how far an heir as such is ever liable even up on a covenant real of an ancestor. Our law decides that every claim against the estate of the ancestor

How far the represent^{ives} of Coven^{or} are bound by his coven^{ts}.

must be presented to the exec^{utor} or adm^{or} and that they must pay all the debts, so that it is difficult to find how far the heir is liable. 210.

St. Comm. 269, not see how according to the spirit of our law the heir can be subjected, ^{on a covenant of person} as the whole is a real & personal and the deceased are bound in the hands of the exec^{utor}. But in a covenant of warranty, after the heir has a pet^{er} his descent, if the coven^{or} is broken, he is undoubtedly liable.

Covenants running with the land & those which do not. All covenants, viewed in consequence are running with the land & those which do not. Covenants which run with the land, & Covenants which do not run with the land, & which are called collateral. But as this division then arises a distinction as to the liability of an assignee on the covenant of the assignor. And it is a general rule that the assignee of a lease is liable on the covenant of the assignor tho' the assignee be not named, provided the covenant run with the land. 120. 111. 115.

To ascertain what is such a covenant, observe that, if the thing covenanted to be done, or concerning which something was covenanted to be done, was in esse at the time of the covenant, ^{and} a part of the thing demanded, the covenant runs with the land because the thing covenanted to be done is considered as annexed to the thing demanded.

6. Glan 459
5. Co. 106.
22. 9. 26.
4. Co. 80.
1. Hol. 521.

Covenants running with the land
and those which do not

A covenant to pay rent is one that runs with the land, for this is no more than a part of the issues of the land. C. Blis 383.
Moore 357.
Paul N. 159.
1 Mac 534.

In the other kind of the thing covenanted to be done or concerning which something is covenanted to be done, was not in use at the time of the lease, or not parcel of the thing demised, the covenant does not run with the land. And as to collateral covenants, the rule is that the assignee is not bound by them unless named. Thus if a lessee covenants to build a wall &c. now on the land leased, the assignee is not bound, unless the covenant named the assignee. - It is not supposed by these rules that the assignee must be named by his own name, but that the covenant is for the purposes of the covenantor. C. Blis 383.
Moore 357.
Paul N. 159.
1 Mac 534.
5 Co 16.
5 Ann 1291.
C. Blis 352.

The covenant is always said to be run with the land, if it goes to the support or maintenance of the thing demised. Thus as in the instance states a covenant to make all necessary repairs runs with the land. So a covenant by the lessee that he will annually leave so many acres untilled. And in all such cases the assignee is bound tho' not named. For covenants of this sort, an action will lie against an assignee of part of the land, for the duty to be performed can be attributed. Thus if leases be to A 100 acres, & A covenants to make necessary repairs, & A conveys 50 to B, now B is bound to make necessary repairs on his part of the 100 acres. 5 Co 17 b. 24. d.
C. 9. 125.
5 Lev 233.
3 Ha 303.
2 West 228.
202
2 East 130.
C. Blis 222.

Covenants which run with the land
and those which do not.

Liability of assignees.

5 B. 158.
1 Mac. 534.

When the assignee is named they are
bound in general to perform all the covenants
whether they run with the land or not. Thus
if a man covenants for himself & his assigns
to build a wall the assignee is bound.

5 B. 158.
1 Gull. 352.
1 G. 433.

But this rule admits some qualification
for the assignee the name is not bound in
a covenant that does not run with the land
unless it relates to the thing demised. Thus
if upon a lease to A of Black acre he cove-
nants for himself & his assigns to build a
wall on white acre, the assignee is not
bound by the covenant, for it relates not
to the demise, & there is therefore no privity
between the assignee & original covenantor.
The assignee has no interest except in the
subject assigned.

Dezman 336.
2 K. 588.
10 M. 197.
1 H. 199.
3 B. 1271.
1 Gull. 356.

But it is an important rule, that
the assignee is liable only for such breaches
as are incurred during his possession or his
right, but not for those incurred previously.
The assignee is bound by the covenants when
bound at all the waste of the reversion of
estate retained himself, & the original lease
or covenant. Thus if the lease covenants to

As to the liability of the original lessee, he
cannot maintain an action, after the lessee
has accepted the apportioned rent, observe this
distinction. After the lessee has accepted the ap-
portioned rent as his tenant, he cannot maintain an action, *Co. l. 20. 21.*
in the next occasion, say the original lessee, for 18th 21. 22.
The action of debt is founded on privity of estate, *4th 21. 22.*
but where the lessee has accepted the apportioned rent for
his tenant, the original privity is destroyed between
the lessor & lessee is extinguished. But if there is
an implied covenant to pay rent, the lessor may
maintain the action of debt, though for
the rent now, for the action is founded on the
covenant.

But where the lessee accepts the apportioned
rent, if the covenants are merely implied by
law, the lessor can maintain no action what-
ever against the original lessee. For even the action
of covenant broken which maintains on an implied
covenant is founded on privity of estate, which
is here extinguished. *8th 21. 22.*

I have observed that where the covenant is
express, the lessee is bound for all rent accruing
during the whole term. It will frequently hap-
pen that the lessee & apportioned rent both hold the
same thing. Now the lessee may prosecute both
in debt & action, & he is entitled to costs in
both suits, but he can recover damages only
once if there is no express covenant & damages.

Covenant broken

There is an essential distinction to be observed between an assignee and a derivative lease or under-tenant. A derivative lease or under-tenant is one who takes a conveyance of part only of the reversion of the term, or ^{takes consequence} of the lease of the whole. So if the lease makes an under-lease of 10 years his own lease being twenty, here the second lease is an under-tenant. If the lease purports the whole residue of his term, retaining the present lease as his own reversion, the latter is a derivative lease or under-tenant, and not an assignee. This distinction is not merely nominal, for between a derivative lease ^{or} under-tenant, ~~there~~ and the original lease there is no privity of estate. The assignee is a sale of the lease & interest. The under-lease is the same as a lease under the lease. The assignee creates a reversion under the lease. The under-lease creates one to the lease.

A derivative lease or under-tenant is not liable to the report on the cover of the original lease. For such liability is founded on privity of estate, but between them there is none.

With regard to assignees however, they are liable on the cover of the original lease whether the assignee is actual, by devise, by sale, or otherwise, or by operation of law.

Rights of the heirs exec &c of covenantee

Dan. 177.

If the lease deviner his term & dies the devise is in legal contemplation an assignee, & it lies on the covenant in the same manner as he would have been had he taken a deed of assignment. - So if the term is taken

under execut^{or}, the person purchasing is also equally liable as the assignee of a term.

Phil. 409. If the lease covenants for himself & assigns, as long as they shall be in possession, & the assignee continues in possession after the term is expired, he is liable on the covenants as long as he continues in possession.

There are some rules relating to the rights of the heir exec &c of the covenantee.

1. If a covenant with to his heirs and assigns for quiet enjoyment, and the covenant is broken in the life time of B, his exec^{or} shall have the action tho' not named. See 1 Vent. 176. Esp. Li. 295. Lev. 26. Bul. N. P. 158. This is the covenant in a real one. Because the damages to be recovered accrue during the life of the covenantee, and so belong to the personal Estate.

2. That on the other hand, if a covenant real is broken after the covenantee's death the action accrues to his heir at law. The exec^{or} has no right to an action whatever. For here the heir at law is the person evicted, and whose right is violated. The injury is immediately to him. Phil. N. P. 158. 9. Esp. Li. 295. Lev. 26. Bul. N. P. 158.

The exec^r of the covenant is liable
 the the covenant is not broken until after
 the covenantor's death provided the covenant
 was express. And this, tho' the exec^r be not
 named, for he is liable for the breach of the ^{1 Mol. 510}
~~covenant~~ ^{contracts} at his testator's death. If indeed the cov- ^{11. on C. 108.}
 enant had been only implied, and were not ^{2 Com Di}
 broken until after the ^{testator's} death, the exec^r ^{the Covenant,}
 would not have been liable. The reason is ^{C. 1. 11. 10.}
 that the exec^r is liable on account of the ^{55. 5}
 privity of estate, but on a covenant real there ^{1 Mac 555.}
 is no privity of estate appertaining to the ^{Cy 20. 2}
 executor.

If an exec^r or adm^r of a lease, comes
 into possession of the lease, in his representa- ^{1 Will. 4}
 tive capacity, he may be sued as a assignee ^{11. on C. 108.}
 all breaches of covenant which occurred during ^{2 Com Di}
 his interest. He is an assignee by operation ^{the Covenant,}
 of law. He may be sued as exec^r or as assignee.

The heir of the covenantor is liable for
 breaches occurring either before or after the ^{1 Inst 315}
 covenantor's death if named and if he has ^{310. 245.}
 real estate. But he is not liable unless both ^{1 Mol. 510.}
 these requisites occur. He must be both ^{2 Mol. 510.}
 named, and have real estate. ^{11. on C. 108.}

In an action against the covenantor's
 heir as a covenant running with the land
 he may also be sued as assignee, for he is
 assignee by operation of law, having all

Covenants to save harmless or save
hands of enemy.

25 May
The intent of his ancestor. — And in such a
case the intent of the heir is imputed to the
action. There is a proceeding in Eng. by which
an action against an infant for a contract
of his ancestor may be continued till the
heir attains full age, tho' his assent is
no bar to the action.

There is a species of covenants which
are called covenants to save harmless or
covenants of indemnity. Under this
head I shall also treat of bonds to save
harmless.

2 Co. 80.
6 Ch. 243.
1 Mod. 219.
1 Th. 100.
6 Gilt. 212.
Oult. 98.
2 Leo. 37.
I should premise that a covenant to
save harmless (as a general rule) is not
broken by the tortious act of a third person.
But there is an exception where such a cove-
nant is to save harmless from the acts of
a particular person.

On bonds or covenants to save harmless
the covenantor or obligee may maintain an
action in some cases against the covenantor
or the obligee and in some cases against
another person, when the obligee's obligation
has expired. Where the covenantor's obli-
gation accrues after the covenant of indem-
nity is given to him, he may maintain the
action upon this new liability. Thus if a
person takes a bond to save himself harmless

let against the escape of the prisoner, and the prisoner does escape. The sheriff may immediately sue upon the covenant, on the ground of his liability to the creditor, even tho the creditor has not commenced an action against him.

R. Ellis 53.
125.
Hoot. 511.12.

If a surety takes a covenant of indemnity from the debtor, and the debtor fails to discharge the debt for which the surety is bound according to the terms of the contract, the bond of indemnity is immediately broken and the surety may sue the debtor upon it, on the ground of his liability to the creditor.

3 Bulster, 234.
Salk. 195.
5 Co. 124.
Hoot. 507.
2 Smith 101.

But on the other hand if one having been bound as surety for another, takes a bond of indemnity after his liability has expired on the original obligation, he can maintain no action until he has sustained some special damage. For it would be absurd to suppose that the parties meant to give an action on the mere liability, or the liability had existed before the covenant of indemnity was given. It would be ridiculous to say that the parties meant the obligor to be come liable so instantly the bond is executed.

Salk 195
2 Bulster 234
5 Co

If a surety takes not a bond of indemnity from the principal, and is compelled to pay the debt, he is in law an actor of indebted.

Cont 525
25 Nov 45
1 Do 509
1 Dec 14

a sum paid for money laid out & expended for the principal. But mere liability to pay is not enough, but the money must have been actually paid to support the action. It was formerly doubted whether this action would lie, but it is now fully settled.

23 Nov

But if a surety has taken a covenant of indemnity from the principal, & then been compelled to pay the debt, he cannot maintain an action of assumpsit against him for he has a higher remedy. — This right of action for money paid & expended holds also against

1 Term 450
14th 259
2 July 272

co-sureties, where one has paid the whole or more than his proportion.

How far Covenantees have a power over the covenant after assignment.

11th Hill
at Exchange

The covenantor may sometimes release after assignment & sometimes not. The rule is this, If the instrument is not negotiable, a release after the assignment by the assignor is good, if it is assignable such a release is not good. Now a bond is not negotiable, if then there is a release after assignment it is good, & a bill of exchange is not assignable at 62

2 Lev 205
Cro El 503
11th 345
4 Dec 277

As a lessee after an assignment of the reversion releases, yet the assignee of the reversion may recover for all breaches that accrue after assignment. But when a lease has been assigned in a lease, & it is said once and the assignee of all right of action for breaches occurring after assignment is a release, provided the assignor

was given before the assignee brings an action for the breach.
Now as the covenant runs with the land and is assignable
it would seem that the lessee had no right to release
the right of action belonging to another, it seems contra-
ry to all analogies of law, why the same rule should
not hold as in bills of exchange. I do not know, but the
authorities appear to have settled the rule. It is agreed
that a release by the lessee after an action brought by the
assignee is of no effect. Release before breach of covenant of all de-

Bro. G. 503
2 Roll 411.
Exp. Di. 308.

mands, does not release the covenant nor the damages which may accrue by
a subsequent breach of covenant to build a house a year hence for
a tenant who releases immediately all demands this will not release him from building
the house. But this case must not be confounded with those, where there is a
present debt payable in futuro. e.g. I give you a bond payable a year hence,
you give me a release of all demands, this will discharge the bond, for there is debt in present
obligation in futuro. But a release of all covenants, even
made even before the covenant is broken, will
discharge it. For there is a covenant upon which
the release can attach.

2 D. Ra. 518
Dyer 57
Exp. Di. 307

Of the pleadings in the action of
Covenant broken.

In giving rules of pleading on certain
actions I give those only which are peculiar
to this action.

In declaring in the action of cov-
enant broken the plaintiff must always state
that the covenant was by deed. For an assign-
ment, not sealed or delivered is not a covenant,
but only a proof of a parol agreement.

2 Le. 814
Q. B. 517
Q. B. 108.
Exp. Di. 298

The general answer to a declaration on
covenant broken, is in general the same as
the same process for declaration on a
contract.

Here a certain particular rule however as to the assignment of the breach.

1. The most general rule on this head is, that where the covenant is general the breach may be generally assigned in the ass. *139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.*

The most general assignment of the breach is in the words of the covenant. As if the lessor covenants that he is well seized, the lessee says he was not well seized. It is merely repeating the covenant, and inserting a negative.

The breach must always be so assigned as to appear to be clearly within the covenant. Thus on a covenant that the lessee should not cut more timber than necessary for repairs, it is ill to assign as a breach that he cut timber to the amount of £100 it should be that he cut more than necessary for repairs.

If by subsequent words, ^{the first} narrower the breach assigned he must confine his plea, to the latter words only, to the breach as narrower, & he can recover for that only.

Where there is a proviso in the deed defining the ^{event} ~~condition~~ on a certain event, the plaintiff is not bound to take any notice of the proviso, whatever. So where there is a general proviso it is never necessary to declare the condition. But the rule is directly the reverse as to an exception in the body of the covenant, the exception must be stated and regulated.

The declaration. Thus if it comes out, no defence to
 to all the wheat in his store except 100 bushels,
 to in his declaration should mention the exception. The
 exception or it would be fatal. The de exception Cop. Sec 200
 unless into the description of the cause of action.
 it is therefore impossible to declare upon the
 covenant without mentioning the exception
 without a variance.

If the plaintiff assigns an inconsistent
 breach ^{under} a covenant, this inconsistency after a
 verdict will be rejected, or rather will be aided
 by the verdict, and the declaration be made good.

12

Thus if a person states the covenant to have
 been executed on the 31st of Dec^r 1813, and in ^{Sec 202} Cop. Sec. 200
 the declaration the plaintiff assigns breach on
 the 1st of Dec^r 1813, after a verdict the words
 to wit on the first day of Dec^r will be reject-
 ed as surplusage. And the verdict would thus
 aid a declaration originally bad.

When one covenant in the alternative
 that is for one of two things, the breach is a
 declaration must be assigned for both, other-
 wise there will not appear any breach. Thus ^{Lesson 250}
 if the lease covenants not to cut timber unless ^{Cop. Sec 300}
 either under the assignment or assent of the
 lessor, if he cuts under an assignment, it would
 be as his exec^t to state in the declaration
 that he has cut without assent, but it should
 be for cutting without assignment & without assent.

But an covenant to pay or cause to be
1 Lk 229 paid, it is sufficient assignment of the breach
Esp. Di 300, to say that the covenantor has not paid. This
is no exception to the rule, for causing to be
paid and paying are the same in legal con-
templation.

And there is a covenant to pay ^{are} for the
Lk 229 contingencies whichever shall first
Lk 229 happen, an averment that one of the contingen-
cies has happened, and no payment has been
Ld Na 132 made, is sufficient without averring that
Esp. Di 301 it was the first of the two contingencies.
For if it is the last, the first must certainly
have happened, and if not it is the first.

On a covenant that a certain act shall be
done by the covenantor or his assigns, it is
necessary in an action against the assignee
to say the breach in the dispositive. But if
the action is brought against the original cov-
enantor, it is sufficient to aver that the cov-
enantor himself has not ~~built~~ ^{performed} the cove-
nant.

So also on a covenant to do an act ^{to a}
1 Lk 129 ~~that~~ persons, or his assigns, an action brought
2 Heble 220 by the covenantee himself, it is sufficient to
3 Mod 132 to aver that the act has not been done to him
himself, for since he brings the action, no as-
signment can be presumed. But I conclude
that if the action were brought by the assignee

Readings on part of 12th

Handwritten: Handwritten

it would be necessary to lay the beach on
the disjunctive. exhib

the discharge. ^{er rights}
In an action of covenant, for a sum certain, there can be no apportionment of the demand. The apportionment of the breach must follow the covenant, and there therefore can be no apportionment. Thus a merchant covenant, to pay £10 per ton for carriage, and the covenantor has a breach that the covenantor has not paid for the carriage of twenty tons & a half, the apportionment is bad, for it is not inconsistent with the covenantor's having paid for the twenty tons, and the covenant does not cover the fractional part of a ton. It would have been otherwise if the covenant

2 Lev 124.

Feb. 19

Oct. 20 -

3 Mch. 19.

926

1894

Sept. 21. 3

Had been to pay at the rate of \$10 per ton Lath 638.
But the Mill may cure the oblongs at 1000. 160.
breach by entering a commitment for the free
Marble, paid.

Healing, on the part of the L^gh.

the debt admits the execution of the agreement and does not claim a discharge or extinguishment of it by some collateral act his defence must be performance. — If war

former customary for the old to place that
he had not broken his covenant. That was

2 Dec 15

4 Bac 85.

22) 228. R. 10

J A. 24

218

the form in all cases. That idea is now
it presents questions as to the form
generally does not form a direct line

86.4.248
2/31 If he had performed, he ought to plead the
performance. — It is laid down by counsel
that ~~the declarer~~ such a plea might be good if the declara-
tion concluded with the words, "so has broken the covenant"
for then there would be an issue. I do not conceive it to
be correct. It is laid down as a rule in our books

1 Inst. 303b
2 Bac. 91
3 Rep. 305. that when the covenant is a deed and in the annex
where the debt was paid performance generally,
it is not necessary to plead performance specifically of
each covenant. This laid down as a general
rule is rather except to the general rule,
for there are more cases coming under the
reverse of this rule than the rule itself.

1 Mod. 648.
2 Mod. 455.
3 Comp. 575.
4 Bac. 91.
5 How. R. Ca. 9. This rule must apply to those cases only
in which the things covenanted to be done,
are either indefinite ^{that} is not ascertained,
or else very numerous. The object of the
rule is to prevent great impropriety in the record.

The rule unless limited as above is directly
contrary to another with regard to which there
is no doubt viz that whenever the debt was
covenanted, ^{affirmatively} to do several specific acts, he
must plead specific performance of each
distinct covenant. Thus if an exec^r covenants

2 Blar 729. to pay all the legacies in a will, and is
2alk 498. sued on the covenant, pleading generally that
R. 2. 359. 60. he has paid all the legacies is not sufficient.
1 Cambr. 114. He must plead a particular payment of each
1 Lec 303. legacy & then can then state.
1. 4. 753.

and some positive; he cannot plead a general performance, but must plead specially per
 Rom. Di. 691. performance of the act, to be done, and that
 C. 25. 26 he had not done what he covenanted not
 4 Br. 31 to do, he must plead specially that he has
 Comf. 548 not done the several acts covenanted against.

Of however where there are negative & affirmative covenants, & the negative covenant is void in law, and then appears on the face of the deed, the plt may plead as if the negative covenant did not exist. Thus if a deputy covenant among other things not to be
 20 Br. 13 had a right to covenant for, that he will
 1 Saunders 119. not execute a certain process at court,
 1 Shaw 855. now if sued he may plead the performance
 5 Rom. Di. 83. of the affirmative covenant without noticing
 236. the negative one.

With regard to negative covenants if the plt pleads performance instead of pleading that
 R. Eli 233. he has not done the act covenanted not to
 Com. Di. While done, the plt can only take advantage
 C. 25. 26. of it by special demurrer, being only a matter of form.

When covenants are in the disjunctive the
 R. 9. 659. plt is in dilemma performance, ~~which~~ must
 C. Little 303. show which of the two he has performed,
 2 Co. 133. & if not the pleads according to the best author
 R. Eli 233. that is all as a general demurrer. La. Bacon
 1 Saunders 119. says it is not an absolute demurrer,
 Rom. Di. 691. but it is all out as a special demurrer.

Readings on obligations of Indemnity.

Where an covenant to do some act which consists of matter of law, as to execute a conveyance, the defendant must plead a performance not only specially, but *quo modo*. He must not only plead that he has made the conveyance, but also show the mode or manner in which he made it. There is an obvious distinction between covenants of this kind and those to do a mere matter in pais, for as there are questions of law, the manner must be shown to prove the conveyance to have been legally made. And whether the conveyance ^{was} legal or not, is not a question of fact but of law.

Dyer 229.
Pleas. 67.
184.
9 Bo. 26.
4 Mac. 92.
2 L. 586.
1 Inst. 303d.

The rules of pleading in actions on obligations of indemnity require a distinct consideration.

In actions on covenants of indemnity the defendant may sometimes plead by way of performance, "non damnificatus generically." In other cases he must plead specially that he has released discharges, or has indemnified the plaintiff, and also show the particular manner in which he has done so.

The principal inquiry is in what cases he may plead in the former manner, and in what he must plead in the latter.

The rules laid down as to our conduct
 also the provision of indemnity.

In order to arrive at this criterion the
1st rule is that a caveat is given to show
show or acquaint the court, whether from
any particular thing ascertained in the in-
formation, a general plea of non damnsifica-
is not good. We must particularly observe
the words of the caveat of non damnsifica which
are in this case discharge & acquaint, the ef-
fect would be different had the words
been non damnsifica &c. But in the case
before us the def must plead a specific
discharge & the manner of it.

But on the other hand if the old had
conceded its indemnity to some European
the ~~old~~^{new} manumission would have been
a good deal.

The true reason of the distinction I take to be that in the first case the deft covenants to ~~do~~ do a particular act, viz to discharge and acquit the p^r. On the other hand in the latter case the deft does not covenant to do a particular act, but merely to stand between the p^r and all harm. No specific act is covenanted. So that if he fail, receives no injury, it is sufficient to over it. But in the former case the d^r is covenanted to do a particular act viz to acquit.

If the covenant is general to save harmless or indemnify, or to discharge or acquit of things not ascertained in the instrument non damnificatus is a good plea. A covenant

to save B harmless or to acquit B of all charges costs damages &c arising from a certain suit, here A may plead non damnificatus. For here nothing is ascertained, and for aught that appears no damage has ever accrued, it is not in the instrument, and if no suit had taken place, it would be ridiculous for the dft

2 R. 2. 10
Carr. 342
3 R. 2. 212
5 L. 2. 44
1 B. 2. 607

to plead specifically that he had discharged the p^lff from costs which never accrued.

So that the plea of non damnificatus is good

But even where non damnificatus is a good plea, if the dft insists upon pleading affirmatively, as that he has discharged the p^lff or indemnified him, he must show quo modo.

2 R. 2. 10
R. 2. 302. 4
5 L. 2. 44
1 R. 2. 10
1 L. 2. 117. 118

Because his affirmative allegation supposes a positive act of performance, which he must plead if it exists, & he pleads affirmatively cannot deny. But if he should plead aff-

firmatively & not specially, not point out the particular act or ~~made~~ ^{my} this plea would be ill only an special demurrer.

1 L. 2. 194
1 L. 2. 117. 118

In a bond conditioned to pay money at a day certain, non damnificatus is a good plea, even tho' it appears from the condition that the bond was given as a general indemnity.

178. D. 668

For tho' the object of the bond was indemnity, the consideration is to pay a certain sum of money at a certain time.

The rule requiring the plea of performance to be special apply as well where the deft covenants for the act of a stranger as well as where he covenants for his own acts. Thus if one covenants to pay all the taxes on a house it owned he must plead a special payment of each legacy so also if he covenants that any other person shall pay the legacies.

159. 560
16th Dec.
2 Nov. 1759.
10th Dec. 305.

In an action of covenant or indemnity, the deft pleads non dam. where that plea is proper, a replication consisting of a general traverse of that plea is all, the replication should set forth the special damage. The deft has sustained. It will not answer to the deft. No averment in the replication that he has been damaged. — The reason of this rule I take to be, that as the plff undertakes to show some damage, it is necessary that he should show the manner in which he was damaged, or in what the damage consists.

178. 83
17th Dec.
2 Nov. 1759.
10th Dec. 305.

There is a rule to be observed with regard to pleading a covenant in one deed in bar of a covenant in another deed. A covenant in one deed cannot be pleaded in bar of a covenant contained in another deed unless the first deed is the matter of a special

2 Cent 217
10th Dec. 309

Of joint or joint & several covenants

ance, or release.

But a defence in one deed may be pleaded in bar of an action of covenant broken on another deed. It must clearly appear however that the defence pleaded in bar ^{3 B. 370.} should have been intended as a defence, ^{Exp. 375.} and be clothed in proper words to render ^{2 B. 424.} it a good defence. ^{3 B. 381. 382.} ^{3 B. 298.}

But one covenant may be pleaded in bar to another covenant in the same deed, though there be no words of defence. For the intention of the parties as well as legal operation of the agreement are to be collected from the whole instrument taken together. Thus the lessee covenants to pay annually a certain rent, and the lessor agrees that the lessee may retain as much of the rent as is necessary for repairs - the lessee may plead to an action on the covenant that the whole amount of the rent became necessary for repairs & this is a good plea in bar. ^{3 B. 499.} ^{8 B. 434.} ^{Moss 694.} ^{1 Dec 1792.} ^{Exp. 314.}

Of joint or joint and several covenants
If two persons covenant jointly & severally the covenant may sue either of them alone, or both of them together, or each of them in a separate action. But if three persons are joined in covenant jointly & severally, tho' the plaintiff may sue all of them together or with or each of them alone, but he may not sue two together without joining the third. For by doing so he would break it as well as joint as several.

But if two persons or any number of
persons cannot jointly, the covenant must
be annexed to them altogether. For here they cannot be
annexed together and severally.

This relates to covenants, on the other
hand if in such case there are two or more
joint covenantees they all must join in
the action as plaintiffs, otherwise the cove-
nant would be subjected to as many actions
as there are covenantees. If in such case
one only of the covenantees sues the debt
may be set off on the record, and demur to thus
defeat the action. This demurrer is founded
on a variance. For the covenant is that the
person alone sues to several so that the cov-
enant declared upon is different from that
produced. He may also plead the general issue.

And if when there is a covenant made
to two joint covenantees, one of them dies the
entire remedy survives to the survivor. The
exec^r of the deceased cannot join with the
survivor, for the right being joint the jus
accrescendi takes effect. But if the survivor
die also the right will survive to his exec^r.

But tho' the entire remedy survives to
the survivor he must account to the repre-
sentatives of the deceased for his proportion.
I have thus far considered only joint
covenants. But where one covenants

with two or more persons jointly & severally,
one of the covenantees may at some cases
sue alone, and in others all must sue joint-
ly. To determine when they all must sue
and when not observe

15. If the interest of the covenantees in the
covenant, appears to be several, each may
sue severally. Thus suppose that I & J by one
deed lease to A white acre and to B black acre,
and covenants to both & each of them that
he is well & truly seized of both tracts of land.
There evidently the interest of the two cove-
nantees is several. So that whether I & J is seized
of white acre or not is of no concern to B, nor
is it of consequence to A whether I & J was seized
of black acre. To if one executes a cov-
enant to A & B of 100 dollars to be divided
between them A & B may sue severally,
for their interests are several, being nothing
more than a covenant to pay A 50 & B 50.

5 Co. 18. 197
7. 8. 1
Boul. N. H. 1513.
2 Leon. 27.
3 Leon. 160
2 Sams. 7
110 a & b
1 Sams. 153

Co. Clin. 729.
Chit on H. 5.

And in these cases where the individual
covenantees may bring an action for himself, A. Clin. 729.
He may declare upon the covenant as made
to himself, without naming the other covenantee.

These rules are to be observed where the
interest of the covenantees appears to be
several. As on the other hand, where
one covenants with two or more jointly &
severally, the interest of the covenantees

5 B. 18 b. appears joint the covenantees must all join
 19. a. in the action. This holds notwithstanding the
 20. a. words joint and several.
 1 Barb. 497.
 1 Mac. 502.
 2 D. 696.

You will perceive from the distinctions
 mentioned that the two or more covenantees
 may bind themselves severally for the same
 thing, yet that two or more covenantees
 cannot have several actions for one and
 the same thing. For if this were admissible
 the covenantor might be subjected twice
 for the same cause, which the law will not
 allow. And I will observe that a

5 B. 19 a. grant to two or more persons jointly and
 severally is joint only. At any rate they hold
 it together.

If two persons covenant jointly and
 severally, each may be sued for the neglect
 of the other tho' the party sued has been quit
 of us respect to the other. For they mutually
 covenant for the acts of each other.

Where two covenantors are jointly and sev-
 erally liable, a recovery against one of them
 is no bar to an action against the other. And
 if the body of the party first sued is taken
 in execution and is in prison, still there is no
 bar against an action against the other. The
 covenantor may pursue his remedies until
 he has obtained his due. But if it is an action
 against one of two jointly and several covenantors

was, judgment has been recovered, and the jury
not satisfied, the satisfaction of the plaintiff
may be pleaded in bar of the action against
the other.

2 East 251
5 Co. 2, 5.
11 Co. 3, 1.
5 Co. 51
Chitton Mill
of Exch 124
134
4 Mac 115

If one of two joint covenantors dies, his
executors are not liable as to him on the covenant, the
action survives against the survivor. But
respect to rights merely legal, it is a rule
that if one of the parties dies, the whole right of
action survives to the survivor if covenantless, and
the whole remedy against the survivor, when
covenantors. If two persons execute a covenant
in this form the covenant jointly or severally the
word or is construed conjunctively.

1 East 250
Camp. 821.
Mr. 275
Hijon Mill
of Exch 130

If two persons are bound jointly and
severally, and one of them is made executor, the
covenantor the whole obligation at law is discharged.
For the rights of one have joint, one cannot sue
nor be sued alone, so that if one is discharged, the
other must be so necessarily.

8 Co. 130.
Salk 400.
1 East 264.
3 Mac. 699

And even in a joint case the whole obli-
gation is discharged if the whole obli-
gation is discharged as to the whole obli-
gation of the debtor. The as to creation of a debt
debt, the holder thus subjoined executors, may be con-
sidered as trustee for the amount, and is com-
pelled to pay the debt.

Full. 243.
2 Mac. 254
2 Mac. 511.
1 East 9. 52.
10 Mac. 515.

If an instrument begins with these
words, "we covenant," and is signed by one person
only, he may be sued upon it as his own covenant.

1 Mac. 338.
2 S. R. 35

And if a covenant begins with a recital that
 2. The 1st, 5th & 6th covenants are one and the same with the 3rd
 2. The 1st, 5th & 6th covenants are one and the same with the 3rd
 1. The 1st, 5th & 6th covenants are one and the same with the 3rd
 or sign it not an action may be brought against
 the 1st. The document contains an averment that
 it did not execute. It is decided the necessity
 of the averment is possible the averment in
 the deed as laid down.

Of thus or more persons limit themselves
 in any contract or obligation, that obligator
 or contract is void of course. The words
 joint, or jointly be not used, without there
 are words of severality. There is an ex-
 ception to this rule, for if an instrument begins
 with "we" covenant as and is signed by two or
 more, the instrument is joint and several, and here
 the phrase "or taken distributively."

Cohe's R 150.
 Pl. 7. 809.
 13. 1544.
 1. 1545.
 1. 1545.

Bailment.

Bailment is a species of contract. Bailor is one who delivers, and bailee is one to whom delivered. It is a contract whereby one person delivers to another a chattel, and the other receives it, and the bailee is bound to return it to the bailor, a delivery according to his stipulations, when the purpose for which they are bailed has been answered.

Every bailor must be a qualified property in the chattel. Some ancient authors take a distinction between a common bailor and a lawless, but no distinction exists in law as to the latter having a higher right than the former bailed, and the former must.

It is here remarked that the mere lawful possession of goods gives the possessor a special interest in the goods. It is a right that may be enforced. Lawful possession always implies a right of recovery. Thus a bailee has an interest in the goods, and may maintain an action on them.

Is it the duty of the bailee to restore or return the goods, when the purpose is answered, or tollans that in certain cases the bailee must be answerable to the bailor. Must it would be wrong that he should be liable at all a bailee. Hence it is a general rule, that he is not liable for loss of damage, if it occurs without any fault of his.

But he is detourment when the bailee is in fault. The nature of the bailment the quality of the thing bailed, as well as the conduct

James 9th 1st
Delivered 17th 18th

2nd. 451.
James 3. 48.

James 11th

17th 18th

7th 18th 39th

18th 39th

18th 39th

18th 50th

7th 18th 39th

18th 39th

18th 39th

James 8.

of the rule must be considered. Different
baileys require different degrees of care. But
ascertain the different degrees of care required
constitutes the principal difficulty on this subject.
To ascertain when the same is
faulty, when he has used proper care, certain
general rules are to be observed.

The most general rule is that the
bailee is bound to keep or to use the goods
with a degree of care proportioned to the
bailement. This rule contains the general rule.
... principle.

cases.

If he does as the rule requires he is liable
for no loss whatever, but if he does not, the
degree of care, he must bear all loss.

In some cases this degree ^{of care} required will
be greater, & in some less than ordinary care.
For the degree of care is indefinitely various,
according to the nature of the bailement.

cases.

Ordinary care is that which rational
men in general use in conducting their own
affairs or keeping their own goods, or in other
words that which every rational man of
common prudence uses in the management
of his own concerns. From this rule you
will perceive that great discretion must be
exercised in the first, to determine whether such
ordinary care was exercised.

This ordinary care is a sort of standard & the duties on both sides of it, are not disturbed by any apprehensive appellations.

To every degree of care or diligence, there is a corresponding degree of default or neglect.

The amount of care in respect to the amount of ordinary care is called ordinary neglect. The amount of extraordinary care is called slight neglect. The amount of less than ordinary care is gross neglect. Jones 11, 12, 21.

Gross neglect is generally considered as evidence of fraud, in the bailor. It is an intentional injury. It means a violation of good faith. — Even gross neglect however does not always prove fraud, for though the bailor or bailee is guilty of gross neglect as to the goods of the bailor, still if he so treats his own goods of the same kind, with the same neglect the presumption of fraud is rebutted. Letting go Jones 12, 33, 50, 54.

To apply the last general rule to particular cases observe the following rules

1st. Of the bailor as for the benefit of the bailor only, no thing is required of the bailee, more than good faith; of course nothing short of gross neglect can make him liable for loss or damage. 1 B.C. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

When the keeping of the goods is merely gratuitous as to the bailor, he is not required to use more care. He is liable only for gross neglect.

2 Co 332

A contrary rule is laid down in 2 Co, which I shall consider here as in the next place.

2 Co 910

There is no objection to the rule when the rule in general is not extended to the particular. For he who is capable of being a witness may also be a witness in such a case as the subject of it.

Jones 15. 22.
22. 37. 41.

2^d. When the bar is only is completed by the bar, it is better to extraordinary cases, & is of course made for the purpose of it.

Jones 14. 22.
22. 107. 105

3^d. When the bar is advantageous to both parties the ^{allegation} bar is an even bar, & the bar is better to an ordinary case, & is made for the purpose of ordering neglect.

These rules are merely preliminary, they will be applied & explained here after I have been proceeding to these rules, I will notice the business of the bar.

Bar is according to the 2 Co are divided into six kinds. That is not the division laid down by Jones, nor is it strictly correct. As however the rules of 2 Co are laid down with reference to the division I shall adopt it.

2 Co 910.
2 Co 911.
Jones 20. 100.

A bar of the kind is called a deposition or depositions. This is a deposition at the goods to be held by the bar for the bar without a return. Thus the bar is

Bailment.

Quarantaine is the bailment. The bailor is
the one called a depositee. The bailee is
sometimes called a master.

A Bailment of the second kind is ^{is called} a loan for
commutation. and is a gratuitous loan of goods. ^{2d Ba. 910}
These are used to be used in the bailment. ⁹¹⁰
The bailor is called the lender, & the bailee the
borrower. Here the bailment is advantageous to
the bailee only. The proper English name for
this bailment is loan for use. ^{1st Ba. 910}
You must distinguish between this kind of bailment
& what is called in the law a mortgage. A
mortgage is a loan, & a mortgage is a loan, and
it is generally made for consumption, & then
differs from a commutation. It is to be
paid for specifically, but by an equivalent
sum. It is not a bailment. A bailment of
this kind is the same as a loan for use, ^{Dock & Ld}
but in return, ¹²⁹
it is returned. In case of a mortgage the
equivalent is not in the borrower.
He is consequently liable for all depreciation.

Bailment of the third kind is a loan for
use of goods to be used in the bailment, and
to be paid to the bailor. This differs from the
former case in this that the loan was
gratuitous, but here there is a reward, ^{2d Ba. 910}
& the bailment is advantageous to both parties. ^{1st Ba. 910}
Bailment of the fourth kind is delivery of
goods on a security for a debt or other sum.

one 100 ft from the center to the surface. This is generally ca-
lled a tunnel, or narrow, the surface is called the
mouth, & the under the passage.

Mailout of the fifth sort is a delivery of goods to be carried or to have some act done with or about them, by the carrier for a reward to be paid to him. His fifth kind is.

to be paid to him. The fifth kind is
 either a delivery of goods to a common
 carrier, and also to a private carrier, or with
 or private person or carrier. — If goods
 then are delivered to a common carrier or
 a private one, ^{as} to a sailor, to a broker or to
 the master &c &c the carrier comes un-
 der this fifth class.

Back of the right hand is a delivery of goods as in the last case to know he carries or for some act to be done with or about them, but without reward. The difference between this and the last is that here he performs gratuitously, in the other for a reward. This last is called *manutatum* & the first a *manutatum*. It is obvious that this right is, and the to be a more solid basis of the law, the only difference being that in one case the thing bailed is to be kept & the other to be carried. The same degree of care is requisite in both cases.

I have thus far been measuring the way
for the application of the different
to the different sets of land.

Butler relating to different sorts of
 Berlin, in these order.

The first kind of boiler is a dry boiler, as a delivery of
goods to the boiler to be kept within ^{ward} ~~range~~, a
here the boiler is built and for cargo, as the ^{ward} ~~range~~
not being advantageous to the boiler only.

gross neglect is considered evidence of fraud in the
 law, it is strictly upon the ground that the
 fault is subjected. You will find it said
 in none of the books that the fault is excused
 for ordinary care which would imply a liability
 without ordinary care, but the word ordinary
 is used there without any definite or correct
 meaning. But the

2d. 10. 10. 10.
 10. 10. 10.
 10. 10. 10.
 10. 10. 10.

12 Mar 25.
 10. 10. 10.

But the bailer is not liable in all cases
for loss occasioned by gross neglect. Indeed a
depository is not ^{strictly} liable in any case
for neglect so much, but he stands only, as
if such gross neglect is prima facie evidence.

But that it such evidence can be rebutted, as Jones 65-6
where the suspect does not furnish evidence, e.g. ^{Dr. No. 655}
and the battle is not hostile. Thus in the battle ⁹¹⁴
keep his own head in the same view, as those ^{Dr 1099}
deposited with him as is not hostile for law. ^{1 Nov 2200}

This proves that the depository is not strictly
liable for neglect but only for fraud.

acceptance. By a general acceptance, it means an acceptance for the value of the goods, within the extent of his liability. There the law implies his liability, ^{to the} and he is considered as impliedly agreeing to take the case, presumed to have to be required.

Take the rule to be now settled beyond all controversy, for the all opinions are in accordance with the general rule.

In *Southgate's* case goods were given to him to be kept safely. As in that case it is seen that the decision in that case appears to be right, but the reasoning is altogether wrong. The point in law is that can we say an *aff. fact.* v. *aff. fact.* states that the goods were stolen without averring it to be without the fault of the bailee.

The general doctrine advanced in this case is that a general acceptance obliges the depository to keep the goods at his peril, that this is not law. ^{to the} This doctrine is expressly denied in all modern decisions.

Some have taken a distinction between ^{uncontested} ~~uncontested~~ by a depository founded upon a valuable consideration, and one not thus founded.

This distinction is now wholly exploded. The argument is the same in the both cases. Indeed it is a legal absurdity to speak of a depository having a valuable consideration, for he is supposed to be a depository. The value of the goods is a sufficient consideration.

1 Inst. 89 a. d.
4 Co. 83 b.
10 Cui. 815
1 Leon. 224.
1 Mull. 308.
Helm. 529.
X Ed. 1. 85.
912. 1. 11. 11. 11.
St. 1099.
Com. Rep. 109.
135.
Pub. R. 1. 12.

1 Inst. 24.
10 Cui. 815.
1 Leon. 224.
1 Mull. 308.
Helm. 529.
X Ed. 1. 85.
912. 1. 11. 11. 11.
St. 1099.
Com. Rep. 109.
135.
Pub. R. 1. 12.

without any agreement whatever.

It was said in Southcoast's case that if goods were left with the depository in a locked chest, of which the bailor keeps the key, the depository is liable for the chest only & not for the goods. This doctrine is unconditionally denied by Lord Holt, because he says he, the depository, has as much benefit of the goods when they are in as when out of the chest, & he has as much power over them to keep them safe in one case as the other. It is somewhat remarkable that neither Lord Holt nor Lord Hale, so absorbed any thing respecting the ignorance of the bailor as to the contents of the chest, which I should think a very material circumstance if the contents were known, the deposit stands on the same footing as others, even tho' the warehouse keeper keeps the key.

I observed that by a special agreement the depository may extend his liability to any degree. Yet an express agreement to keep safely does not subject him at all events. He is excused in such cases by the acts of God by inevitable accident, or by any acts of violence committed by wrong doers, which he cannot resist. Care & vigilance may protect against theft & dillidie but cannot against violence. This rule presupposes that he has been in no default, for it may be that he was rashly

4 B. 23. 684 a
Bac. 237

Id Mag 10
Jones 62. 2.
75
Doct. 11. 190.
Hibb. 24

probable from such cause, he will be liable, tho'
those causes be not within his control. At all times
the bailor exposes a horse, in more or less
measure to a long lease. This is true of every
other bailor.

So he may also be sub-
jected to losses occasioned by inevitable acci-
dent, or any loss whatever by a previous breach
of trust. Thus if a man hires a horse for 20 days
and goes another in which the horse is lost or
lost in any way, or otherwise, he is
liable. For he has no right to the horse for the
journey. Had a man hired a horse for one
day, & he is & keeps him two, he is liable
for every loss happening on the second. This
rule is applicable to every bailor.

But of the third kind, is a bailor
of goods for hire. Now this bailor, the bailor
acquires a transient qualified property in it
tho' he is not the owner, & the bailor is absolutely right
to take it back or reward. Here the bailor
being advantaged to both parties, the bailor
according to general principle is bound only
to use ordinary diligence & consequently liable

only for ordinary neglect. But to that I say,
that he is bound to use the utmost diligence
which places this bailor on the same footing
as a borrower. This opinion of L. J. has been
transferred into a number of books, and it
is thereby a dictum.

20 days

18. Co. 249

244.

237, 238.

244.

244.

244.

113.

20 days

18. Co. 251

244 & 245

244 & 245

244 & 245

It is necessary to see that a hire is not the same
as a loan & a borrower is not the same
as a hirer. Jones also makes a difference between
them. They both say that a hire is even
in the fact. "I doubt the truth of this rule how-
ever) but that a borrower is not the same
as a hirer. They do not rank the liability of a borrower
the same as that of a hirer.

The truth is that Ed D. has derived his
authority from Proctor who says that at
a considerable distance from the original source
this is however
is a mere transcript from the Roman law, and
Sir Wm Jones says that there is only one of
them who uses the superlative viz Gains

I would assume that three cardinal prin-
ciples run thro all the rules respecting bailment to wit

That where the bailment is advantageous
to the bailor only, the bailor is liable only
for gross neglect, & cannot be held for ordinary
care.

Where the bailment is advantageous to the
bailee only, he is liable for slight neglect and bound
to use more than ordinary care.

Where the bailment is advantageous to both the bail-
or & bailee, the latter is required to use ordinary
care & is consequently liable for ordinary neglect
only.

Upon the whole then there is no decision
nor are there any authorities covering more than

Jones 21
121-123

Bailment

ordinary case even a bailor. But the law is to be the decision of all the judges.

It cannot be said *prima facie* is excuse for loss, occasional by inevitable accident, or acts by violence. And however the loss might have happened, if it were occasioned without any default of his, he is not liable.

When a chattel is let for use, the bailor is not bound to keep the thing in repair, this is to be done by the bailee.

Bailment of the fourth kind is pawn or pledge.

When one goods are delivered to one person to another in any way, the object at which appears to be the security of a debt, the property will be considered as a pledge. This definition is not perfect because the pledge may be for an *incumbrance*.

This species of bailment, being a benefit to both parties the law is based on principle. In an ordinary case only, a bailee only for ordinary use. This I take to be generally established.

It was holden in *Randall's case* that the law is not bound to keep the goods as he kept his own because he has a property in them. But this would in some cases have exempted him from liability even for gross neglect. I presume to think that this is the case because the law is based on principle. But every bailee has a qualified property in the thing bailed. This doctrine is not only contrary to principle but also the authority.

The law is *prima facie* excuse for loss.

2d Mass. robbery, the same as a hire

1913
46326 The law is stated, that the owner is not liable.
1.5ac 237. This doctrine as laid down is assumed. Jones holds
Palmer 991 unconditionally that where the loss is accidental
Sept 78 by mere theft the owner is liable, ^{he says} in such case the
owner is liable. I cannot see how he can be liable in any
case. For I think him inconsistent with
his principle in other cases. And I think him
as far from being reasonable as he is. The reason
that he assigns for the rule, is not true in
point of fact. It is absurd to say that a
man cannot ever lose his goods by theft, if
he has used ordinary care.

It is always a question of fact whether
Lima 1.7.18 ordinary care was used or not, let the loss
Suth. 522. be by theft or in any other way. I can-
not see how it is a principle of law, that
lost by theft implies a want of ordinary
care. — What degree of care is required
is a question of law, but when that de-
gree is given, it is a question of fact whether
it has been expected or not. And this Jones
himself thinks to be the case. It is remarch-
able that Sir W. should have laid down
this rule as he has, when he says in the case
of a borrower, that the borrower is liable
for theft unless he prove that he exercised
extraordinary care, which seems to be

Jones 9.92
100.110
1178

Jones 9.2

thought that theft might be committed notwithstanding extraordinary case.

The result is that neither the opinion of Leake nor Sir James appears to be correct, according to the principles & analogies of Law and authority.

The pawnee like every other article requires a qualified or special property in the thing pledged. This interest is determined ^{by payment or} upon the day of payment, and the interest is immediately reversioned in the pawnee.

If then after payment or tender of payment, the pawnee detains the pledge after demand, he is a wrong doer, & in this case becomes liable to an action for the property, more than mortgagor in such case mortgagor. The action is called an action of detinue, he is a mere tortfeasor.

So also on the pawnee's refusal to return the pledge after payment or tender, the pawnee may maintain against him either detinue, trover, or replevin. And it makes no difference whether this refusal is made by the pawnee or in person, or by his agent or servant acting in the business of his master.

It seems to be the better opinion that a refusal to redeliver a pledge on tender or payment is an incomplete offence at O.L. The authorities are not all agreed however. The rule seems to be founded in policy to guard the pawnee against attachment or fraud as pawnees are

generally delivered to the pawnor, and although an owner
with respect to the pawnor has it not
at his power to be of the pawnor & pawnor.

As to the return of payment on the one hand the
pawnor vests in the pawnor, so on the other the

money lender becomes the pawnor's, & it is re-
quired that on the part of the pawnor in pawn,
the pawnor becomes holder of the money for the
pawnor, he is however merely a depository.

In some cases the pawnor has a right to use
the pledge in other ways. This by the way is
rather the doctrine of the *U.S.* than the doctrine
of authority. This right when it exists

is said to be exercised on the pawnor's
own expenses or expenses. This is the

presumption of absent spirits or not, (accord-
ing to the *U.S.*) according as the pledge would
be made better or not at all affected in use.

The presumption exists, it is said, to insure
the *U.S.* would not be injured by use as
in the *U.S.* The *U.S.* however states that the

pawnor in such case ^{uses} must use the pledge
at his peril & that he would be liable for
loss even by robbery.

If the pawnor is at expense in keeping the
pledge, he may use it, it is reasonable, so the
purpose of the pawnor is the same. I think it
would not be this case to be liable for loss not occasioned by his own fault,
but ~~not~~ no authority - it is his own business.

Baltimore.

It seems that according to the Roman law, the owner must
see that he does not let the property of the use. But
we find no such thing in the books of the C.C.

As the other view of the thing plies with ^{Libra 917}
no more to be seen, and the looking no longer ^{Lib. 4. 1. 32.}
seems clearly to be wrong is not allowed to us. ^{Page 113.}

Thus if a man should throw his clothes

If the owner uses the pledge under the law
does not allow of it he not only uses it at
his peril, but it will amount to a conversion to
a conversion, and he is consequently liable in
the action of trover. I find no rule in the
books applicable to such case, but I think
it follows necessarily from the analogy
of law that the owner in such case is
liable in trover. The conversion 5 Mac 257
266

in trover may be by an unlawful taking ^{under title}
or by an unlawful detention, ^{trover.}
that the unlawful user here I think
would make him liable to the action.

The law as to pawns is said by Lord Holt
to apply to goods found. The meaning of the ^{Libra 917}
proposition must be that the degree of care
required of a finder is the same as that
required of a pawnor. As this point the 10 C. 252
authorities are not agreed. Powell says that
the law implies a contract on the part of
the finder that he will use ordinary diligence.

219 The rule is laid down in C. Eli et al. that the
 599 finder is not bound to keep them safe or
 120 liable for negligent keeping. I think the former
 219 opened the best. But as the authorities are
 in variance, it will remain a question. I think
 the former opinion to be true, but how will
 this doctrine agree with the principle that the
 where the bailee is for the benefit of the
 bailor only that the bailee is liable only for
 gross neglect. The truth is that a finder is
 not a bailee, he does not stand as a deposi-
 tary. Here the owner does not voluntarily
 send with his goods, there is no finding. He
 finds the goods & finds, & the bailee is
 not a bailee. But it seems strictly just that
 the finder should be bound to use ordinary care.

The decision in C. Eli was right, and the
 only question that is the opinion of a distinction
 of the Ct. The decision was that trover would
 not lie in that case, & it would not, but
 the doctrine was advanced that a finder
 is not liable for negligent keeping, but it
 is a mere dictum not a judicial decision.

A Conn. provision is made by stat. law.
 for the recompense of the finder; here then
 the finder is liable as a bailee, the keeping
 of the goods is advantageous to both, & therefore
 he should use ordinary care.

219-220

I have reported finding that the opinion in
 C. Eli was not correct.

In making these remarks, I have taken it for granted that the finder has no compensation. But it is a well settled rule of the Court that the finder has no lien on the goods for his expense & trouble, he is bound to deliver them up for the owner's promise of property. And if he refuse he is liable in trover. This is different from M. L. the finder has then salvage. — 2 H. Bl. 254. 2 H. Bl. 255.

The question then remains whether the finder can recover in any way for his trouble & expense. If he can't it must be by an action of assumpsit in which the finder must specially a special interest & request as well as a promise, but I do not conceive how this can be done. — I think that the principle of the O. L. gives no remedy to the finder, it is what is called in Latin a voluntary conveyance. Tidd's Contrav. 2 H. Bl. 255. The rule of the O. L. that a voluntary conveyance H. Bl. 255. Exp. 57, 90. (by which is meant a voluntary act of kindness done without any price,) will not support any action in trover.

A refusal by the finder to return the goods on demand by the owner is not of course a conversion, tho' it is prima facie, because, the proof of ownership may not be satisfactory. The finder however must act according to the reasonable evidence, & he is not bound to deliver them until he has this reasonable evidence. If a finder the goods of M. & claims them & brings an action & recovers, then it has been determined

in Com. that the first recovery is not a bar to
 a second action. There is no exception here.
 non for disavowing to this doctrine, I think it
 is an incorrect decision. These authorities furnish
 analogies, which weigh strongly against it.

If a pawnor having tendered the debt
 & upon a refusal by the pawnee to deliver ^{the money}
 recovered against him in action, the pawnee loses
 his right to the debt, & may maintain his
 action for it, but he cannot have this action
 until after demand of the money before
 tendered. The pawnor after having made
 the tender is to keep the money for the
 pawnee.

If perishable goods are pledged and by the
 cap become of no value, yet the pawnor is re-
 liable to his debt & may recover it.

So while the pledge remains in the hands
 of the pawnee unimpaired, he may sue for his
 debt & recover tho he retain the pledge. The
 pledge is a mere collateral security, and
 does not deprive him for a moment of his
 right of action. This is the general rule, but
 it would not hold if there was an agreement
 to the contrary between the parties.

If the money is not paid at the day
 appointed the property becomes absolute in
 the pawnee at law. The pawnor has however
 still remaining a right of redemption in
 Equity. And may compell the pawnee by a

224. 123

176. 156. 109.

Don. 151.

Cooper's Bankrupt.

Law. 190.

226. 156. 109.

1. Bulst 29

91

1. Mac 298

1. Bulst. 159.

1. Bulst. 523

1. Mac. 298.

1. Bulst. 209

1. Sh. 919.

1. Cap. 24. 85.

1. Lev. 116.

1. Bulst. 199.

1. Mac 691

1. Bulst. 545

1. Bulst. 200.

1. Bulst. 105.

1892

but as Equity to restore the pledge upon tender
of all due to the pawnee. This supposes the
pledge to remain in the hands of the pawnee.
i.e., for if he has sold it, he cannot be com-
pelled to repurchase it. See - Christian Case
Vol. 21. 61

Dec - Christian Church.
Vol. 2. p. 125.

A factor cannot perform the goods of No 1178.
his principal so as to give the person a Ben. 12. Vol 2. 182.
of the principal - and Master & Servant

After the day of payment has elapsed, Book 205
the owner may doubtless sell the property.

And it has been holder by Gov. who cites Owen 124
 Owen 124 the genuine may before the story, 1858-9.
 1858-9. 29.
 1858-9. 29.
 1858-9. 29.

According to those opinions, then the assurance A. J. 174²⁴
can upon or sell the pledge before the day of Sept 198²⁴
pays? but I think this cannot be done, or

[Faint handwritten notes:]

These cases are opposed to those which are
the right of the government as a
~~a case or two have been taken~~

S.M.C.

~~There~~ ^a are personal property ~~which~~ cannot be transferred.
But the right of the pawnor is a mere lien on personal property;
and there are numerous analogies which

and there are numerous analogies which

Now that a person cannot be sold back as the

day of payment. It is a rule that a person cannot be forced to do what he does not want to do in his own house.

1 Mar. 298.
Prot. 8.
By June 12. Co. 12

come up the cañon. But it is a mile above
the cañon. I have been told that

Ca. Hl. 856.
Mame. 100.
2 Mac. 370.

that "a man can forfeit by his crimes
whatsoever he can convey, not his own right,

The conclusion then from the union of these

two miles, would be very strong that he can
not sell the paper. But he in his absence

not now. The issue cannot be ~~settled~~^{settled} before the day of payment. He is high authority.

Now taking the rule laid down by Justice
 Powell, & the two rules above mentioned, &
 the authority of Brooke with consideration.
 I think that the weight of authority is on
 the side that the pawn cannot be sold
 before the day of payment. It is true
 that the property in the pawn is substantially
 the pawnor's, now a rule of this sort is in the nature of a
 personal trust, & is fiduciary. If the property is encumbered by
 the pledgee, the pawnor can have no remedy against him. It is true
 that a mortgage may appear before day of payment, but a mortgage
 is real property, it is bona fide & cannot be impeached, but a pawn of this
 kind is convertible into a loan, & is a personal trust, or is a foreigner & he
 cannot be impeached.

There are two cases from which one would be
 led to conclude that the pawn could be sold before
 the day of payment. A pawned goods to B for a certain
 sum, & B before the day of payment pawned
 them for a still greater sum, to C. A brought
 his bill to redeem of C, & he was compelled
 to pay ^{the} whole debt due to C, in addition to what
 was due to B. This proves nothing, because the
 bill was here brought after the day of
 payment, & consequently the decision must be
 the same as if the pledge was made af-
 ter the day of payment, & the pledge forfeited.

Again a pawn cannot be taken in exe-
 cution nor attached for the pawnor's debt.
 This bears directly upon the question whether
 or it can be sold before the day of payment.
 for if it can sell it, why can it not be taken

2 Ves 691

352

Exp 5, 6

Ames 124

in execution, for it is a rule that what a man can
not can be taken in execution.

The pawnor may forfeit his right in
the pledge by reason of felony, he may sell ^{1 Mulst. 29}
his interest, for this can work no injury. ^{1 B. 224. 5}
The pawnor however in case of forfeiture cannot
take the pledge from the pawnee without
paying the debt due to him. For he only con-
sidered the interest of the pawnor by the
pledge.

It was anciently deemed a forfeiture to
a pawn, that it should be delivered when
the debt accrued in favour of the pawnee.

If it was delivered at a subsequent time, it
was not deemed to give an interest to the
pawnee, but a mere ^{license} ~~right~~ to exercise as a
pawn, but the license was countermandable, ^{2 Lev. 20}
so that, probably, that delivered was no ^{1 B. 224. 5}
security being countermandable, about this ^{1 B. 224. 5}
is not now law. ^{1 B. 224. 5}

It was formerly doubted whether the
day of payment was fixed, it was not a tender
and it was not the property in the pawnor
unless made during the joint lives of the
parties. It was settled that the pawnor
might redeem at any time, in such case, ^{1 B. 224. 5}
during his own life. This was denied in ^{1 B. 224. 5}
two authorities, seems to be the rule. *

* See appendix

But where no day is fixed the pawn must
be redeemed during the life of the pawnor
or at a tender by his executors will not avail
at Law. — The reason of this rule is
that there must at Law be some living
parties to the right to redeem at Law. For
otherwise the pawnor may suffer, for tho'
he may sue in the mean time, the pawn
or it may be worth nothing or sold and
sent by process, & then the pawnor's only
remedy would be his lien on the pawn.

Mac supposes that there would still be an
1 Mac. 239. ^{right} of redemption in equity after the
1 Dow. 205. death of the pawnor. This right cannot
injure the pawnor for he has a right to
sell the pledge after forfeiture at Law, &
cannot injure him.

If a day of payment is fixed by the
1 Phil. 429 contract, the pawnor's interest is not for-
1 Mac 239. feited by his death before the day. After
1 Dow. 205. his death his personal representative may
redeem.

Thus lien of pawnors

Part of the bill is a declaration
of goods to be carried or to have some act done
by the bailee for a reward to be paid him...
about them. This claim includes a demand for a
private carrier, & a common carrier, Inkeeper &c

1840

But these two different classes of indices

A delivery to a private person includes a delivery to a ^{private} ~~proprietor~~ ^{individual} character, as to a farmer or a ^{single} broker, ^{or} ^{any} ^{other} ^{master} ^{of} ^{the} ^{trade}.

This content being advantageous to both

A private letter of this date is preserved

In case of loss occasioned by theft, the

21 The thing desired is obtained by the con-

He is considering for rent a hotel (as it may be) the one

See it revised in the file; for permuting the proper - Jones 14/12.

to be exposed to direct sunlight if he were, must be 3 H. 8
3 H. 14. 8

Abundant to ordinary in places not cleared. I have seen

any more than he would be liable independently
the Bailor's

of all respects for my property has been sold,

to pay his debt, & consequently he should be
the bailor

Wrote to Mrs. W. for money. She sent 1000

There is only one a little bit of a...

Jones 89
129.

According to the law, if metal is delivered to a smith, he is wrought into an utensil, the smith is not a bailee. Such a delivery to him vests the property absolutely in the smith as a mutuum, & if a loss happens, he must at all events bear it. The reason assigned is that the form of the thing delivered, is to be altered by fusion according to the contract. That it cannot be identified & therefore cannot in any event be specifically restored. This I think incorrect. tho' it is true the owner cannot identify the metal yet if the fact can be proved that it is the same, it can be identified in point of fact, & therefore specifically restored. The hardship of the case as it may be, is another material objection to the doctrine; for if the metal were destroyed by the act of God before any alteration made, the smith would still be liable. In the case of a mutuum the borrower purchases the property delivered, to return an equivalent. But here the no injury would arise from the smith's using this for another person's purpose, yet I conceive that he has not strictly any right so to do. Jones considers it as a mutuum, in which case the smith would be as a purchaser of the metal. I do not think it a mutuum. In case of a mutuum the smith would undoubtedly be liable, tho' what is lent is destroyed, & is returned a purchase and return made at once.

2nd ed.
Page 89.
Note 20.

When property is delivered to a bailee, who
is to perform some act ^{of skill} upon or about it, in
his professional character for hire, the law im-
plies a twofold contract on his part. Not only
that he will redeliver the property, under the
impulse of the bailment, is answered, but also
that the act shall be performed skillfully, as
in a workmanlike manner.

But if the act to be done, is not in the
line of the bailee's profession, a common law
implies the law implies no contract on his part.
That it shall be skillfully done. And therefore
the bailee cannot be liable unless he makes
an express agreement that it should be done
skillfully.

If goods delivered to a bailee of this kind
are lost or destroyed by neglect or ^{by law} the bailee is
guined of him, he is not entitled to wages
for the labour necessarily bestowed upon them.
I take this to be the rule on principle. There is
little to be found in the books. For the bailor
covers all benefit of the labour of the bailee
by the bailee's own fault. But if the prop-
erty should be lost after the labour has been
bestowed, a loss without the bailee's fault
I think he would be entitled to his wages,
but never if the goods were lost by his fault.
Thus much of private accident of
the plaintiff.

Public Bailies Common Carriers.

Common carriers are now become so frequent that the law is very important.

A common carrier is any person in a civil who makes it his business to carry the goods of others for hire, as a common carrier, broker, warehouseman, and a ship master employed in carrying freight.

It seems to have been formerly doubted whether one other than a carrier by land fell within the description of common carrier, and the law on this subject was then extremely uncertain. However, in the reign of James II., a ship master in the reign of Charles II. was held to be a common carrier.

The owners of the ships employed in carrying goods for others, are also common carriers in case of a loss the action may be brought against either the owners or master, for the freight and cargo. If the owner is alone liable with the master is then released but many reasons render it necessary that the master should be also liable. For often the freight is paid to another of the owners.

By the Statute 7 Geo. II. it is provided however that when the loss is happened by the misconduct of the master or crew, the owner shall be released and the value of the ship & freight, to the master.

would be liable for the whole.

If a com. car. having commenced to carry the goods of another, & having his hire tendered, both refuses to carry them, he is liable to an action on the case. By assuming this public character, he impliedly holds out an offer to carry for any one applying, so that there is an implied contract to carry them. 144. 150. 2. 344. 371. 155. 2 Shaw. 327.

But tho' a com. car. is bound to receive property as mentioned in the last rule, a com. car. is still at liberty to make a conditional or special acceptance. Thus the law allows him to say that he will not be answerable for a packet unless he is told what it contains, and a proportionate ^{value} reward shall be given him. 144. 150. 2. 344. 371. 155. 2 Shaw. 327.

The bailment here being advantageous to both parties, it would follow if there were nothing to impede the application of the general principle that the com. car. would be liable for no less than ordinary neglect. And this was the doctrine so late as the reign of H. 3^d. In the reign of Edw. 1st it was settled that robbery was no excuse, but the rule at that time extended no farther. 144. 150. 2. 344. 371. 155. 2 Shaw. 327.

But the rule now is that a com. car. is liable for losses occasioned in any way except by the act of God, of public enemies, or of the carrier. 144. 150. 2. 344. 371. 155. 2 Shaw. 327.

144. 150. 2. 344. 371. 155. 2 Shaw. 327.

You perceive then that the carrier is com.
 and is answerable for beyond that of com. matters
 where the carrier is answerable to both. The
 distinction is founded on public policy. A great
 part of the commerce of the world is conducted
 by com. car. and if their liability were equal
 to the same as a private carrier, they would
 have it in their power to commit great
 fraud in collusion among themselves, or
 fraud. And shippers are under the necessity
 of trusting to them, so that they must
 be under the strictest rules for the protection
 of commerce. L. & C. suggests a distinction
 between a com. car. and a private carrier. The
 com. car. receives a reward because of the reward the
 com. car. receives, but the same is the case
 with the private carrier. That he should
 receive a reward is necessary to constitute
 him a com. car.

A com. car. is not liable to this extent unless
 he is paid, or to be paid, because if he
 carries gratuitously he does not act as
 com. car. but as a volunteer.

A com. car. then is in the nature of an
 insurer in all events except of acts
 of God, or public enemies, or of the carrier.
 If then the goods are lost by any cause
 above human control he is excused. But if
 lost by fire, or by any other cause
 by which he is liable. For if it is by accident.

as incendiary he is not excused. Lighthouse is the only point secure for loss by fire

2 R. M. 113.
Exp. Di 660
Exp. Di 640

Where goods were spoiled in consequence of a hole gnawed thru the side of the vessel by a rat, the carrier was held liable. Nothing but the act of God is a good justification.

He is not excused for loss occasioned by the acts of rebels or insurgents, they are not public enemies within the rule.

Pirates are public enemies within the rule. But it has been decided in Exp. that a shipmaster is not excused for losses occasioned by fresh water pirates i.e. robbers in harbours.

1 R. M. 18
Exp. Di 620
1 Cent. 190
1 Mod 85

If a tempest makes it necessary to throw the goods overboard the carrier is excused, but the immediate act of throwing over is not the act of God, the necessity, the cause can save is the act of God.

Gones 157
1 Mol. M. 79
2 Mol. ab. 564
2 Mol. lit. 280
Exp. Di 626
12 Co. 63

There is one case indeed where a box of jewels was thrown over in a tempest, & the master was held liable for the loss. In all probability the box was light, & there was no necessity for throwing it over. This decision must have turned upon the point that the throwing over was unnecessary, or it cannot be law.

Alleg 93

In case of loss by master's carriage, driver, master, submaster & coachman must aver the loss against them. For it is the neglect of all as to the passengers. I doubt. - I am very sure it is not however.

By throwing overboard, Mac 594-5.
Pearson & More.
128
2 R. M. 40
Hatchell Par. 465
1 Cent. 220

1 East 220 This is a rule of the L.M. which is indeed a
branch of the Law.

2 Liban 291

* We have a stat. on the subject.

1841. N. Y. The com. car is excused where the ~~loss~~ loss is
occasioned by the act or fault of the carrier. Thus
where it delivered a cask of wine to it is a state of
force or violence to be carried, & the cask burst in con-
sequence thereof, the com. car. was held not to
be liable.

69.
84. Di. 127.

2 Shaw 127 and the owner insists upon his goods being carried
1 Mac 344 & is willing to take his chance, it is his own fault
if the goods are lost.

And for the purpose of only charging the carrier
the goods must have been lost while in his im-
mediate possession or under his immediate care
& control.

1841. N. Y. 0 & control. Thus if the owner send his servant
84. Di 621 in a box or vessel to take care of the goods and
Sh 324 he takes charge of them, the carrier is not liable
Ph 690 for the loss by theft. The meaning of this rule
2 Shaw 344 must be I conceive that the carrier is not li-
ble as com. car. But he would be liable if the goods were lost in
his fault or neglect. As if the goods should
be spoiled in consequence of the vessel's being
unseaworthy.

The intent of the rule then seems to be that
the master is not liable for a want of care in
the custody of the goods in such case. He is liable
as a ~~com.~~ private carrier would be.

Wailon.

But where goods are delivered to a master, and a package is merely requested to take the oversight of them the master's liability is not impaired.

1 Nov 2.
B. & O. 550
Holt 19.

It seems that a carrier is liable for the loss of a box, tho' ignorant of the contents unless he discharge himself by a qualified or special acceptance.

Holt 30
2 Holt 128.
H. 145.
Carrth. 48.
Jones 148.

And according to two decided cases tho' the carrier is misinformed of the contents by the owner, he is still liable unless he accepts special. In one of these cases the owner told him that the box contained articles of small value when in fact it contained money; the carrier being misled he was held liable for the money.

Allegan 99
1 West 255.
1 Mac 325.
Holt 75

The other case was the owner said the box contained a book & some tobacco, when it contained \$100. The carrier was held liable for the loss in this case.

Allegan 99
32 Holt 195.
Locke & P. 100.

Both of these cases appear to me addressed to every principle of justice. The books say that he may discharge himself by a special acceptance i.e. in this case for the carrier to say I will not take any more than the box only contains books &c. I am gratified to find that Lord Mansfield has expressed his disapprobation of the doctrine; and later opinions of Lord Kenyon & Lord Brougham are also opposed to it. I think these two decisions are not law. The ground I should take is this.

4 Nov 2900
P. 145.
1 East 210.
Jones 148.

148

I deliver to H a box containing \$1000, telling him that it contained 100. There is a fraud upon the carrier. The amt is concealed in order to diminish the hire. The carrier has no means of knowing the amt, and certainly can not be considered a bailee of the \$1000. He is a bailee only of 100. So far as he is informed so far he ought to be liable. The carrier is in the nature of an insurer of the risk.

Much has been said with regard to a qualified or special acceptance & how much it qualifies the general liability of the carrier.

Exp. Di. 622. To make such an acceptance it is not necessary that there should be a personal communication between the bailor & carrier. See Paul v. N. Y. 2298, 285. 8 D. M. 531. 146. M. 298. advertisement in a public paper may be sufficient.

It is to constitute a qualified acceptance, but whether it is so or not depends question whether the owner had notice of this advertisement, & this must be left to the jury.

Under a general acceptance (except in the case of fraud) the car. is liable for what he receives. But under a special acceptance he is

Exp. Di. 621. liable for so much only as he agrees to carry. In cases of this sort the carrier's remuneration extends no more than is contracted in the special acceptance. As to any thing in such his reward does not extend he is not a com. car. & consequently is not liable as such.

Exp. Di. 621. 285. Paul v. N. Y. 2298. 8 D. M. 531. 146. M. 298.

In the case of H. H. the carrier having concealed the nature, the carrier was held not to be liable at all. But that was in case of a special acceptance by which the terms of the contract, he was not liable at all. In published cases there for many in fact he would not be answerable for an error & in up he was informed of the unit. —

A master of a stage coach who receives pay for passengers only, & not for goods is not liable as a com. carrier, tho if lost by his driver he is liable, but not as com. carrier.

But tho the com. car. is not liable for more than his reward extends to, yet he is liable without actual payment made beforehand or without an express promise of payment, because he may receive his hire upon a quantum meruit. But he is not bound to receive the goods without payment.

To charge the car. it is not necessary that the goods be lost in transit, for if they are lost at the place where he arrives before delivery according to the contract or custom, he is clearly liable.

And if the goods are not delivered & lost, he is liable unless he can prove the established custom is not to deliver but to deposit at the wh. The same principle lies upon him. He is liable of course until delivery unless he can show that he was not bound to deliver by the established custom. When the custom is for the carrier not to deliver to the consignee but to keep in a

17. 7. 1828
Sept 2. 1821.

1 Mac. 343.
2 Shaw. 128.
Salk. 282.
Esp. Di. 822.
522.

1 Mac 449

2 B. & C. 49
Esp. Di. 823
1 Mac. 343.

201581.
Exp. Dis.

When in the consignee he is not liable as com-
carrier. But when he is liable as a com-
carrier, if he keeps them as a depository, he is
liable for storage he would be liable as a com-
carrier. If he keeps them for a reward for the storage
he is liable as a carrier.

If the consignee of goods directs by what
carrier the goods shall be sent, he & not the
consignor will be entitled to the action of
the car. Where the consignee is manifestly
the carrier, the consignor has no concern in
the goods after delivery. — This is upon

Co. 6206 a general order for goods, the consignor selects
89. 11 300. This carrier, he is entitled to the action, he is
11. 1 343
359 the carrier. Wherever the consignee makes
the carrier himself liable for the price of the com-
11. 11 263.
11. 11 359. mence, & takes him off the risk, he is
entitled to the action even tho' the consign-
ee select the carrier.

By the Com Law. a postmaster was li-
ble as a com. car. for letters, money, &c. entru-
sted to the mail, for at Com. Law. he was acting
11. 11 646 in a private capacity. But since the es-
tablishment of a general post office by 1845
11. 11 153 the suppression of private posts by stat. 12
Chap 2, the postmaster has ceased to be con-
sidered a com. car. For acting in his official
capacity he is not a com. car. he enters
into no contract with the individual.

It is indispensable to the character of a com. car. that he receive hire from the individual employing him. But a post master receives the wages as an agent of the govern. not for their use. Besides no man on earth would incur the responsibility if he were liable as com. car. From the nature of

his character he is not liable to the individual for the defaults of his deputies. His deputies are the officers of the Law. He is liable for his own defaults to the individual injured, & so are his subordinate agents liable for their defaults, but no further.

Com. carriers are said in the books to be liable on the custom of the realm, and the common form of declaring was to count on the custom, but this is totally unnecessary for being universal it is a part of the C. of the

When property is stolen from a com. car. or otherwise lost or injured, he being guilty of no misfeasance, the only remedy is a special action on the case. No one will not be for there is no misfeasance. If he is guilty of an actual misfeasance no one would lie. But he is liable on the ground of neglect.

The carrier may make himself liable to both these actions.

the guest is a stranger, and in consequence of their liability for the goods of guests.

A notice of goods in a guest is an insurance policy, and the guest is liable for the goods of the guest. The notice of goods in this manner is a contract to a person, or a public contract, for a reward.

Especially, a notice of goods in a guest is a contract, as a consideration of the goods, but the goods do not resemble each other, as one other, as is the case being both bailment. The notice of goods is a contract for the use of the goods, and the goods are considered as a contract, as a private contract.

Especially, a notice of goods in a guest is a contract, as a consideration of the goods, but the goods do not resemble each other, as one other, as is the case being both bailment. The notice of goods is a contract for the use of the goods, and the goods are considered as a contract, as a private contract.

Full N. 4. 73
June 130 4.

The doubt is this: can being a warehouse-
keeper to both parties, the warehouse could acc-
count to the owner in case of loss. In ordi-
nary respect only. But the policy of the law
has extended his liability, never to further.

June 5 1834, 4 Dist.

It seems to be a prevailing impression that
an warehouse-keeper's liability is extensive, with
that of a common carrier but I find no
explicit authority to this effect.

He is clearly liable for any loss or ca-
sualty by fire, theft or any other cause. This law
was made for the benefit of merchants, the
being generally strangers to him, therefore ex-
posed to danger in having their property
deposited in his hands.

9th 32. 2.
1st 32.
1st 32.

According to the general rule also, the in-
keeper is liable if the goods have been stolen
by a stranger, whether there has been any neg-
lect or not. He is not here excused by force
may, case as he must be by the general prin-
ciple.

June 12th
2d 32.
3d 32.

This rule however does not hold if the goods
have been stolen by the guest's own servant
or by his transaction, companion or by any one
with whom he is in the room with him, by his
own neglect. Here the loss may be attributed
to him, and he is liable.

2d 32. 285.
3d 32. 33.
4th 32. 183.
5th 32. 183.

And I apprehend that an warehouse-keeper is liable
for losses occasioned by common carriers, tho'
I find no authority, conclusive upon this sub-

Quib 9.

ject. "Bunder says if the car be broken & the goods taken by the heavies & the carrier shall be excused. This would imply that he would be liable for robbery by one other. In arguing a case for this it is he says "for in roads such cases cannot be resisted". But Jones says he shall be excused unless the case be truly irresistible. The conclusion from the authorities is that for a robbery committed by a small force, he would be liable but if by a large one as a mob is irresistible he is excused. And therefore it should seem that he is not liable to the extent of a common carrier. It seems to me that the policy of the law would require an equal degree of liability, as an innkeeper & a common carrier, tho the authorities are not exactness.

see 1356

8 Es. 322

see 132

If I have deduced the true rule, it is very indefinite & uncertain. It is that if the robbery is committed by a great force the innkeeper is excused, if by a small force he is liable. I am by no means sure that this is correct.

He also says that the innkeeper is not liable unless there be some default in the innkeeper or his servants. But this is not law & is expressly denied by J. Muller, in the case of the 1st.

8 Es. 322

trip. di. 620

5 Es. 322

in the

There are the most definite general rules I can find on the point.

The innkeeper is liable only for such goods, ^{880. 226} as are *infra hospitium*. But this includes ^{Exp. Di. 226} his warehouses & stables.

Of these the goods of a guest are removed from an inn by his own direction. The innkeeper is regularly not liable. Thus if a guest orders his horse to be sent to a particular pasture, & he is stolen, the innkeeper is not liable. But if the innkeeper put ^{Mal. 2. 17} him there without the consent of the guest ^{Exp. Di. 226} & he is stolen the innkeeper is liable, because ^{880. 226} that is his own fault that the horse is not *infra hospitium*.

I would here observe that if the guest should order his horse to be put into a pasture & the horse should escape & be lost for want of a sufficient fence, I conceive the innkeeper would be liable on the ground of ordinary neglect, though not on the rule *infra hospitium* policy.

If damage is done by the carrier, or driver, the carrier may sue him in assumpsit, ^{1100. 226} or in tort ^{280. 226} for the agreement or implied, or in tort for the neglect.

But in this case neither detinue nor trover will now lie, for there is no unlawful detainer, nor actual misfeasance.

Thus far as to innkeepers & the fifth class.

Warrant of the writ of *habeas corpus* is called
mandatum or mandate, but is a detaining
of a man to be examined, not a removal.

This species of warrant is sometimes called
in the books 'writ upon committment'. This
expression is greatly improper. The proper
name is *mandate*.

Now as the carrying ^{or act} out to be done is
gradual, the only difference between this
and a writ is that one is to carry it out and
the other to keep.

A warrant of this sort being a *mandatum*
to the sheriff only, the habeas *corpus* is
158 *order* to the sheriff, principle for *order*
17. *Cor.* 253. Let them go, neglect, as in the Law.

But where there is an express engagement
by the habeas to use more than the case
or principle required, and a lot of *habeas*
the number of the case he is *order* to use
he is *charge* liable. This is an act of his
express *assent* otherwise he would be liable
only for *neglect* like the *order* of *Cor.* 253.

Let such an *assent* to use all *neglect*
17. *Blk. 163*, 14 can a *shift*, may in certain cases be im-
plied; But under what circumstances will
be considered presently.

An *assent* of this sort will then im-
ply the *mandatum* to let them go, and

That according to the amount in the case
of the June 1880, the position of the student
at that time will be considered as not refused
and I consider as an allowance made up of the
living.

But I consider it an extraordinary case that he will be liable in the want of it, tho' in that case the Justice said that the want of it would be good neglect, this is to compromise all as to the liability of the latter mechanics of case. The result is the same, 11. 5. 200 over. 88 but the other view would make it appear that even want of care of one description would be good neglect, which is unlawful in the first principle of negligence. If this doctrine be correct all the rules laid down would be admitted. The allegation of Li. & Co. seems to be Li. & Co. to Larson as a mandatary.

(The engagement) is one all necessary cause
 a short time in this is the best, ¹⁸⁸⁸ 11 Co. 54.
 The act to be done is in the line of his pers. ¹⁸⁸⁸ 11 Co. 54.
 of social business. The state to be the line ¹⁸⁸⁸ 11 Co. 54.
 made, to put one through the line ¹⁸⁸⁸ 11 Co. 54.
 from the nature of it, enables this person
 can hardly account for this advance of
 we in he is unqualified in any authority
 the main aim is to make the
 social duty of a writer when it lies in ¹⁸⁸⁸ 11 Co. 54.
 and when it lies in ¹⁸⁸⁸ 11 Co. 54.

June 20. 4
New Ed. 2
1850

That he says that when the carrier undertakes to do any other act as to unload or carry or otherwise he must be expected to expect the necessity of care. This is an unqualified opinion.

But when there is no express contract or similar it is not all necessary care as in the carrier is liable for gross neglect only.

The case is still that was that it is a merchant's express he enters at the custom a horse the last of the month with his own, and he is in a hurry. He did enter them but under an wrong denomination, in consequence of which they were lost. It was held not liable because his own goods were lost on the same account, & therefore there was no fraud.

1850

One house of agents that a carrier to carry goods does not imply the agreement to use all necessary care & skill.

1850

The law implies an agreement to use all necessary care & skill on the part of the carrier when he enters goods in the line of his employment. This is implied in the contract. It is not implied in the contract to carry goods.

1850

all care & skill in keeping it, for if the goods should be lost he would be liable only for gross neglect. Thus if a taylor engages to make a garment he is impliedly engaged to do the work skillfully, but does not imply one for all necessary care to keep a piece of cloth or other goods.

Bailment.

And even an express agreement by the mandator to use all ^{necessary} care & skill, will not subject him for losses occasioned by the act of God, or public enemies or of the Bailor.

But it would seem as principle that ^{James 5} the bailee cannot even by a special agreement exempt himself from liability for ^{his own} fraud or torts. It is contra bonos mores & therefore against Law.

I observed yesterday that according to some authorities, the omission of the stipulated care was gross neglect. This I disagreed to. But whether it be time or not, on the delivery to the bailee ^{the engagement on his part} binds him as a contract. So that after the goods are delivered to a mandatory the engagement on his part express or implied binds him as a contract. But he is not bound ^{Le Ma 920.} before delivery. If I promise to build a house for ^{5 T. R. 143.} a man, and at the time refuse to do it, he cannot ^{Br. 7. 663.} compel me, it is in iduum pastum. So if I promise to ^{Doe v. St. 229.} carry goods gratis to a certain town for A. and at that time refuse to take them, I am not liable. But after having taken them I am bound. ^{Pao. C. 354.}

The opinions are not all agreed on this point, but besides the above authorities there is a judicial decision directly in point. Where A. ^{Yelw 128} delivered money to B, & B promised to deliver it to C, B failed to deliver it, and A recovered from him in assumpsit on the promise. This case is decided on the authority of ^{Br. 767. 8.} ^{ag. 128}

Jones 47-80
G.R. 140.50
Callan

Jones says that where special damages have
caused an account of the facts, not taking the
action will be ^{an action will be} ~~an action will be~~
according to agreement, tho' the contract be
quittances. Besides he says of the special damage,
that the damage must be accrued if at all on the
breach of the contract, but this would be dam-
num absque injuria, the question of special
damage cannot arise till the question of contract
has ~~been settled~~ ^{been settled} been settled
it would be beginning at the tail end, for it
would be useless to try the party's right
to damages before it is ascertained whether the
action will lie.

Besides the case which Jones supposes which
will not support damages even if the action
would lie, indeed the doctrine is unsupported
by authority.

On the other hand where the goods have been
delivered special damages are not necessary
to maintain the action. The law presumes
damages but there has been a breach of contract.
There is another dispute as to the liability of
a mandataire, vide next page.

It is said that the action of a mandator
 his undertaking being gratuitous, is founded upon
 his neglect & not upon his promise or responsibility.
 If this is the case I would imagine how an
 express agent can extend his liability & for he
 may make himself an insurer of all risks. But
 if his express promise would not bind him, as a
 promise, how can he become more liable by any
 promise than he would be without one. There is
 no foundation for this opinion. Jones cites Holt
 but I doubt whether it supports the doctrine.

Jones 86
 contra
 D. H. 910, 919.
 2 H. 140, 142
 186.
 2 East, 62

To be at in the spirit of all the authorities
 that he is liable on the promise.

General Rules relating to different Bailments.

The Bailor's Lien — I understand Bailees
 Lien.
 a lien to be a direct claim to, or incumbrance on
 an same specific property of another as security
 for some debt or duty. This definition, I con-
 sider I apprehend that a lien exists only in fa-
 vour of bailors of the fourth & fifth kinds, &
 not at all of the first.

It is true that a lien has a right to detain
 the property, but this is not a lien, it is a special
 property, it is not an incumbrance to secure a debt.

In the case of a depository or mandator there
 are obvious no lien, the bailor may counter-
 mand the depository, and recover his property.

601. 61. 283

Bailor of the fourth kind the bailor has at
 any a lien. In the case of a pawn, a lien is crea-

2d. 1846. 2. To lay the delivery the very object of the statute,
178. is to create a lien.

3d. 185. Most barles of the 1st line have also a
186. 42. right to hold the goods entrusted to
them as a security for their hire or reward. This
rule does not relate to all barles of this class.

2d. 185. I will here observe that a third person who
2d. 185. obtains possession of the goods from the barle
wrongfully, has no claim to their hire.

2d. 185. A com. car. has a lien till his service is
paid.

And it is laid down by Li. Holt that if goods
are stolen & delivered by the thief to a com. car.
the latter may detain them even after the true
owner, entitled to recover for carriage as laid,
for he is considered to receive them.

3d. 185. An innkeeper may also detain the person
2d. 185. of his guest for he pays for his bill, he is
186. 269. a host as his person, & he is bound to receive him.

3d. 185. He may also detain the horse of his guest
2d. 185. till paid for the hire of the horse. Now the
186. 269. horse cannot be detained for the payment of the
2d. 185. 888. greater amount of the guest. The owner may be
889. 147. maintained detained till the whole bill is paid.
186. 269.

3d. 185. An innkeeper has a right to detain
the horse even tho' the horse be brought by a
person not the true owner. The innkeeper obtains
the horse as the true owner, until his receipt
is paid for.

But the innkeeper loses this lien by so

Bailments

insurance premium the loss to count as his loss
 upon this is the rule as to all bailees. *1 Mod. 240. 1 Burr. 203. 1 B. & A. 4.*
 and is applied to a bailee. A bailee is a right to
 detain, & necessarily refers to that already in
 possession.

There are cases of public bailees

Merchants Bailees of the fifth class have

also a lien. A Taylor or other mechanic *38 149 a*
 goods are delivered to him a lien till the price is *1 Mac 240 int.*
 paid. Here it is true that he is not bound to *2 Blt 42*
 receive the goods, but the lien cannot be for- *Yel 67*
 feited on that account. But it is said he exists for
 the promotion of commerce.

In the other hand an exporting farmer can-
 not detain the property committed to him, nor *100 240*
 till paid; the reasons given are first that he *1 Mac 240*
 is not bound to receive them & second the in-
 terest of trade & commerce is not affected by it.

The Capt of a ship has no lien upon her
 for his wages or stores for he is deemed to trust *Salh. 22*
 to the personal credit of the owners. And if he *Dow 97*
 had a lien he might make a very improper use *12 Mod. 240.*
 of it to the injury of the owner. He might *Abbot on 240*
 hire out a small country to enforce his lien *14 D. 240*
 untill she became useless. *1 Dallas. 29.*

The mariners however have a lien upon
 her, in that one instance in contract upon the
 credit of the ship. They generally know nothing
 of the ship & thus there is no danger as the case
 may be of the owners for that they were hired to

Abbat 259
Ph. 239
Cay 107.

ship, the master has generally the power to give
them up, he is the person to whom the law
And in all cases, where there is a special
or express agreement on which the duties rest, for
his benefit he has no lien.

Quercet
5 Mac.
2 Col. 22.
Cot. Di. 589
280.

And it has been determined ^{in case of} that a factor,
who claims a right to deliver the goods
until paid for his care, that an express promise
on the part of the owner to pay a certain sum
surrender the right of detention. Because it was
said the service relied on this express agree-
ment the case came within the legal maxim
expressum facit cessare tacitum.

St. 1119.
Cot. Di. title
Merchant W.
An. 254.
Burr 394.
2 Col. 1154.
Cot. Di. 108.

To a factor or commercial agent there is a lien
upon the goods in his possession - vide title Non est
servant.

I will be always that with regard to
the other duties ^{than} those of the ^{fourth} ^{chapter}
fifth chapter tho all of them have a special
interest some higher & some lower, yet none
of them have a lien. There is nothing to be secured
for they are entitled to nothing.

1 Mol. R. 128
1 Mac 240
Cot. Di. 172.

When the rights of merchants are affected by
Parliament.

1 Mac 231
Cot. Di. 222.
1 Mac 222

If one man baile the property of another, it
is said that the bailee must deliver the property to
the bailor according to the terms of the contract.
because it is said that the bailee cannot assign
it the bailor's property, therefore should be
his contract.

The amount of the rule is that if a bailee
the goods of A to B. It is obliged to deliver the
goods back to A. — That if he delivers the goods
to the true owner, in some cases it will be
that he should be liable to the bailor. I conceive
that the rule means nothing more than that
the bailor will be justified in delivering the
property back to the bailor. The rule then
should stand that he may, instead of he must.

Holl 684
Holl 112
Ditch. Nat.
Hew. 107.

That this is the true rule as I explain it
appears from another rule of law & gives, viz that if
the bailee delivers the property to the bailor
pending an action of T. M. (the bailee) then re-
delivery will have the action of the owner as
himself. From which it appears that the rule
means that he will be justified by the deliv-
ery to the bailor
ery, & not that he must do so.

The explanation of the rule as I have now
given appears to be established by the rule that
if a thief give goods to a son or a servant. The latter
is not bound to deliver them until his re-
mand be done, but he must give them up
to the true owner as soon as he is there, if
then a public bailee must give to the true owner
or to his agent or servant.

It seems to be agreed that if a bailee in such
case dies, & his exec^r comes into possession of
the goods, he is so much deliver them to the
true owner at his peril he cannot discharge
himself by a delivery to the bailor who is not

1. The 103.
2. The 203.

The answer. The reason given is that the executor comes into possession of the goods by law is bound to deliver them to him who is entitled by law & the executor not being bound to the personal trusts of the testator, the reason is very technical & doubt whether the executor would not be excused, if he had delivered to the bailor.

In pursuing this subject however, when the rights of strangers are affected, it is necessary to consider the rights of the bailee's creditors in cases where the property supposed to be in his hands, and the right of purchasers of the property supposing it to be his. This is a very important point in the title.

The law on this subject is in a great measure regulated by the statute of 13 Geo. 3. which appears as being in affirmance of the common law. I shall first consider this statute before I proceed to the C.R.

1. The 103.
2. The 203.
3. The 303.
4. The 403.
5. The 503.

By this stat. it is provided, that if under a person becomes bankrupt, he has in his possession, order and disposition the goods of another with the owner's consent, these goods are liable to his debts, and may be taken by the creditors of the bailee. Thus if the purchaser of a store who sends into them into possession of the goods to trade with, ^{as his own} becomes bankrupt, these goods are liable to his debts.

This statute however is founded upon the appearance of false credit with the public. It is thought more reasonable that the bailor

Bailm^t.

who has enabled the bailor to acquire the prop. 23. M. 70.
should suffer it rather than those who trust
to the credit which the contract of the bailor
has created.

This stat relates however only to the case
of bailment. Bailor, with regard to the bailor
who are solvent there is no need of any, and
even if it be his goods of his own justice
does not require that the bailor's property
be liable.

This stat extends to all cases in which the bailor
goods of one person are in any manner in the
possession of the bailor with that person's consent.
That it extends to goods which did not origi-
nally belong to him, & those which did.

It is material to observe that as to goods
originally belonging to the bailor & by him sold,
but permitted by the purchaser to remain in his
possession the rule was as strong before the
stat as it is now. Such a circumstance would
have been sufficient by the stat 13th and
said.

I will here observe that the red^d of the statute, 26. 27.
are allowed to come upon the ~~statute~~ goods
in his possession not strictly upon the ground
of fraud between the bailor & bailor, but on
the ground of the owner.

Suppose a person properly to possess his own
thing, it will not follow it is not so. It is not
any more proper in this latter case, hence it will be held
nothing to prove that was the point.

It is very material then to observe that the
returning any presumption of fraud as between
the bailor & bailee will avail nothing to the
bailor as between him & the creditor.
1 Ath. 180.
186.
1 Des. 355.

The question is whether there has not
been a false credit raised by the conduct of
the Bailor, if there has he is liable.

But the stat. does not extend to goods
posseped by a bankrupt in the right of another.
If it an espec. should become bankrupt, be-
ing in possession of the goods of the decedent.
That liability is not liable to his debts. But
not the fault of the representatives that he
hold the goods, he returns them by law, &
time cannot prevent it.
1 Selw. N.D.
192-202.
1 Ath. 154.
2 D. W. 189. n.
3 D. R. 618.

The stat. extends however as well to mort-
gaged goods as to absolute sales, where the so
lender remains in possession. But it may
be asked why are not mortgages of Land sub-
jected likewise? for this plain reason. That
possession of Land is no proof of ownership.
The ownership of Land may always be proved
by title deeds. But there can be no such proof
as to the ownership of personal property.
Possession then especially with the order &
disposition is the best evidence of title.
1 Ath. 180.
1 Des. 348.
1 Wils. 280.
1 Selw. N.D. 189.
196

The stat. does not extend to the sale of
a ship at sea by the owner or charterer here
immediate liability cannot be given to the
creditor. It is not therefore the fault of the
creditor.
1 Ath. 180.
1 Des. 348.
2 D. R. 551.
1 Des. 351-2.
356.

under that the goods remain in the possession
of the vendor. But in this case the vendee
must take possession of the ship on her return, as
soon as may be, otherwise if the vendor became
bankrupt the ship will be liable to the creditors.

1 Ves. 282.
2 B.R. 485
482. 491.
Cyp. L. 507.

And there are other cases in which an actual
delivery of the goods is not necessary under spe-
cial circumstances. Thus where goods are kept
in a store, delivery is the key to the purchaser
is a delivery sufficient. This term is properly a legal delivery.

4 B.R. 511.
2 B.R. 955.
Cyp. L. 511.

But to bring a case within the Statute, the
goods must be deposited in the bankrupt's pos-
session. But even when goods are — they must
not only be left to his possession, but in his
sole disposition. Where possession is not sufficient.

Suppose A lets B a horse to go a journey, & that
B is a bankrupt. The horse will not go for his
debts. There is not a sufficient evidence of an owner-
ship, according to common experience, as it is very
common for men to use other men's horses and
carriages, but would be otherwise, if he kept him
for one or two years.

1 Ves. 282.
Camp. 202.
1 B.R. 185
3 B.R. 811.
Cyp. L. 507.
501.

On the same reason a carrier is not
answerable for a fraudulent & necessary journey to be
answered for the carrier, will not make the
goods liable if the carrier became bankrupt.
This is a case in no within either of the Statutes.

1 B.R. 185
1 B.R. 185
2 B.R. 955.
Cyp. L. 507.

The bankrupt carrier must appear in all
cases to be the owner or to have a right
in either of the Statutes.

1 B. & P. 82.
 1 B. & P. 218.
 3 B. & P. 185.
 1 B. & P. 570.

For if I saw the nature of his interest, the
 presumption of his ownership is excluded. For
 the same shall have the goods in his possession
 in the credit. Thus if a factor known to be such
 becomes bankrupt, the goods ^{of his principal} are not liable for
 his debts. For he being known to be a factor
 the possession of the goods gives no false credit
 to him.

These two states are intended for the benefit
 of the bailor's credit only, but have no con-
 cern with purchasers.

The stat of Oler has made a decision
 upon this subject, but it would be necessary
 to treat of it as it is merely an affirmation
 of the Com. Law.

I should not have cited of the stat.
 21 J. 20 Carolo. Had I not thought it merely
 an affirmation of the Com. Law.

In common cases of bailments, ^{not falling within either stat.} the general
 rule is that the true owner, that is the issuer,
 may recover ~~of the~~ of a purchaser of the
 goods, or a mortgagee, or a creditor
 who takes the goods of the issuer as being his
 except in the single case of a sale by the bai-
 lor in market overt. The maxim is caveat
 emptor. the case is different in the leasing case.

~~There is no case~~ The rule is the same as to
 the bailor as it would be if the property were
 taken wrongfully from the issuer.

But there is an exception to the last rule
 where the property bailed is money or has to be paid.

1 B. & P. 2.
 2 B. & P. 12.
 1 B. & P. 44.
 1 B. & P. 283.
 1 B. & P. 579.
 1 B. & P. 200.
 1 B. & P. 255.
 1 B. & P. 288.
 1 B. & P. 376.
 1 B. & P. 542.

Bailment

on any circulating medium; a bona fide transfer
 into the hands of the bona fide receiver who
 holds it as the true owner. And so is the rule 3 B. & C. 458.
 tho' the money be taken wrongfully. The rule is the same tho' the money could be identi-
 fied and is founded on principles of commer-
 cial policy.

Under this stat. a receipt of the bailor
 who seizes the property of as he cannot hold it against
 the bailor in any case, unless the bailor be a bankrupt. B. & C. 88.
 It is in under our law, however, that the ap-
 pearance of ownership may have been. For if the bai-
 lor is solvent the creditor may have his remedy
 upon the property. It is also of a purchaser. He
 must be shown his remedy against the bailor as the
 implied warranty of title. Long (305)
 7 J. R. 698
 397.
 1 Reg 243.
 3 B. & C. 458.
 185.

Observed that when the bailor is insolvent
 his credit will not hold, unless the bailor was
 such holder as gave him a false credit, I now
 add that the property must also be in his
 order & disposition, with the owners consent. S. C.

But tho' the bailor is insolvent with
 all the appearance of ownership, the creditor can-
 not hold against the bailor, unless in the terms
 of the bailment enables the bailor to appear
 as the true owner. This was settled in the very
 memorable case of Hoar & Hartup. S. C.

If facts were there I discovered a bag of jewels
 sealed with a sanction or distinguished as a dealer.
 The bailor in breach of his trust broke the bag

18th 185 and took out the jewels & a being involved in
the loss of them. The third person. The bailor was
allowed to recover them from the third person.
For the jeweller & had no right by the terms
to treat these goods as his own, besides the seal
was a clear violation of his trust.

This case will illustrate the rule that
the bailee must not and have the appear-
ance of ownership, but also with the consent
of the owner.

3d 18th 44 If then goods are left with a depositee
& he becomes insolvent & sells them, the owner
cannot recover, or if later, for his debts, the creditor can-
not take them of the bailor.

(Mason & Paunderson v. Conn.)
Temporary possession of the goods, for a particular
purpose, & the vendor becomes insolvent,
neither the vendor nor purchaser can hold of
the owner.

It has been determined also in Conn. that
where one person lends & gives the use of the
bailee to come insolvent, the vendor or purchaser
cannot take hold of the goods, for it
being a very common thing, the propriety
is not sufficient proof of ownership, & thus
a rule of policy supports this principle for
otherwise this rule would be discouraged
as a very useful one.

A purchaser of beef cattle for the state of
New York, committed them to a certain farmer

to drive them to New York he brought them
to the town & sold them: it was held that
the purchaser could not hold them, because
the mere fact of driving is a mere right &
no proof of ownership.

It seems to be a question not precisely
settled in the books, whether if goods are
bailed for hire to be used by the bailee for a
certain time, the creditor upon his being invol-
untarily, can take the use of them for the term
of the bailment. I think that the purchaser
cannot hold and that it cannot be taken in
execution. The principle upon which I found
my opinion is that it is a personal trust to ^{5th 604.}
the bailee and he cannot himself assign ^{7th 6}
it during his term. The general principles re- ^{7th 11. 12.}
lating to the assignment of a power apply ^{10th 26 27 28.}
equally here. ^{6. 11}

Upon reading the case in ^{11th} it would
appear that the opinion of ^{12th} was in fa-
vor of admitting such a bailment to be rather
but when considered with reference to the sub-
ject matter of the case securities subject to
attachment, I think it should be amplified
to favor the doctrine, the question was of a power
of attachment, now a house could always be taken
for there is no service trust to the house &
the furniture being let with the house, was a
part of the premises & the creditors is
the house & furniture.

9
What actions the bailor and
bailee are respectively entitled to.

It is a general rule that the bailor

5 Mac. 194. having the general property in a chattel, can

1 Hall 4 and maintain an action of trespass against any person

Lat. 214 who takes away or injures the goods in the

possession of the bailee, wrongfully

2 Bulst 258

But this rule will hold even though the
bailor never had the actual possession, provided
he has the constructive possession as the
owner of property.

The "constructive possession" is
defined in Law as an owner's right to
the right of present possession. Thus if A
makes a bill of sale to B, & B leaves them in A's
possession, & a stranger takes them away, B may recover
them from the stranger the bill of sale gives him the property.

It is a rule of law that he who has the
interest in things personal has of course the
constructive possession unless it has been
transferred by his own act or by operation of
Law.

But if goods are lent for hire to a person
for a certain time by the bailor, the bailor
cannot maintain any action of trespass
during that time. For he maintains house or his property.
The plaintiff must have had the actual or con-
structive possession at the time of when the
injury was done, but here he has neither.

Lat. 214.
2 Nov. 537.
1. 2. 4. 58.

72. 29.
17. 2. 450.
42. 489.
8 Johnson. 432.
L. 2. 383.

What then is the remedy of the bailor?
 After the term of the bailment has expired, the
 bailor may bring the action against the wrong-
 doer. If he could have brought his action
 during the term, he must have had the right
 of possession, & having that would also have
 the right of reversion during the term,
 which would be inconsistent with the
 rights of the bailor. During the term the bailor
 has the right of action, not for the de-
 tainment of the term, the bailor has the right
 of action.

If the property be actually
 destroyed by the wrong doer during the term
 the bailor may sue the wrong doer to satisfy
 the bailor, but if he should refuse to bring
 his suit or lend his name to the bailor to
 sue a P.O. of C.H. will compel him to lend
 his name to the bailor.

If goods belonging to D are in the pos-
 session of A, & A gives them to B by parcel
 without delivery, & a stranger takes them
 away or injures them while in B's possession. 2 St. 955
5 Mac 154.
 He cannot have an action against the wrong doer. Exp. de. 577.

For he has neither actual nor constructive
 possession, he does not give without delivery
 does not give a right of possession.

But a delivery to the donee's servant, or to Camp. 234-5.
Exp. de. 14.
 any one authorized to receive them by the
 donee's order or direction is in law a delivery
 to himself.

If the bailor delivers over the goods to a stranger the bailor cannot maintain trespass as against the stranger for receiving the goods, ^{by the bailor} nor as against the first instance taker. But where the bailor may maintain trespass against the stranger the bailor may maintain trespass against the stranger.

Bailor's rights - On the other hand most bailors & I conceive every bailor may maintain an action for the full value of any wrong done to the goods of which he is the owner, when in his possession.

As to bailors of all classes except the first there is no doubt in any of the books respecting this right.

A stranger may receive of a stranger who takes them away from the bailor, or who gives them to his possession for except as the time runs he has the right of possession.

The ground of the bailor's right to sue a stranger is said to be his own liability, and is the bailor. It has hence been doubted whether a depository, under a general acceptance can maintain an action as a wrong done, because it is said he is liable to the bailor only for his own fraud.

I think that this conclusion is wholly unsupportable -

Because the bailor's liability over to the bailor I apprehend is not the ground of his

5 Bac 187.
201.
1 Do 242.
1 Will. 160.
2 Ba. 887.

5 Bac 187.
202.
Paul. N. 132.
2 D. Ba. 278.
Talb. 140.

2 H. 50.
Paul. N. 132.
Exp. in 578.
577.

5 Bac 187.
202.

1 D. 189.

1. 478.

2. 269.

right of action ag^t the ba wrong done &
2^d That if it was, that he would still have
his right of action.

I conceive that upon the ground of his
having a special property, he has this right.

It admits of no question that a bailee Jones 112
7 N. W. 294
298
1 Mac 240.
340
Rep. Di 571
has a special property, he has the right of
possession ag^t all persons but the true owner.
It is absurd to say that he has the right
of possession without admitting a remedy
those who injure him in the possession.

Again it is well established that a finder
has a right of action ag^t a wrong doer, if he
then is entitled to the action, when in posses- 45 Cal 153
34 505
3 Mac 262
Rep. Di 575
Cont. 264
sion without the consent of the owner,
a fiction the depository is who has it with
his consent. But it were now contended that
the ground of the finder's right to the action
was his liability over to the owner.

A still stronger analogy is that a servant
robbed of his master's goods may maintain 4 Mass 24
Com. B. 64
Comb. 253
12 Mod. 34
13 Co 59
2 Pund. 130
an action ag^t the thief by the statute, but
but it is universally agreed that he is not ha-
bilitated to his master, the ground of his right
is clearly his lawful possession.

Again an uncertificated bankrupt after 1 Pol. 24
having acquired goods after his bankruptcy
may have taken ag^t a wrong doer, yet no
person will contend that his right to the action
arises from his liability over to his assignees, yet

is a mere depository of the goods for the consignees.

I trust then that it is clear ^{by analogy} should the ground at the bailee's right to an action against a wrong doer is not his liability over to the bailor.

Phil. M. 1132nd It is said that special property alone is ^{not} sufficient to give a right of action against a wrong doer.

7th 391 That to come to what establishes the doctrine to the contrary. It is laid down by the Ct. of M. 1872 that even a mere possession is sufficient to give a right of action against a wrong doer. This is by all these authorities the opinion I think will stand as a law.

Even if the liability of the bailor over to the bailee is in any case the ground of his liability as then against a wrong doer, but even on this point all a depository would have a right to the action. For he was in possession. He is accountable for them and when he neglects to take care of them.

This I think proves that in this point that the depository is entitled to the action, so no bailor is liable at all events, and is cannot be of service in either case. He is liable or not before being and whether he is liable or not cannot be tried in an action against the wrong doer by the bailee. This then is no distinction between

depository & other bailees as to his right of action against a wrong-doer.

Reasons of policy would require that the depository might maintain the action as a wrong-doer.

If the bailor delivers the goods to a third person it seems to be settled that the latter must have an action against him. This seems to be a rule of law. The bailor has a special property, a limited possession & consequently a right of possession. This rule is to be observed both in cases of bailment and in cases of sale. It is an immediate reference to the question I have been discussing.

5 Mac. 260
12 M. 282
10 M. 507

An auctioneer or broker may maintain an action in his own name at a contract for goods sold to the buyer, & that he may do so, tho' the goods were known to belong to another. Here he acts only as a servant to the owner, but he has a right to the action because he has a beneficial interest in the commission and because the contract is in his own name. I think the true reason why he is allowed the action is because the sale is in his own name, & not his interest arising from commission.

12 B. 1481
2 D. 596-2.
1 Phil. 115.
10 M. 137.

A factor or broker is entitled to maintain an action in his own name.

So also a master of a ship may maintain an action in his own name on the contract of sale. I take the reason to be because the contract is in his name. There is a difference in the contract.

You will perceive from rules laid down, that in many cases an action may be brought at the wrong place for the full value, either by the bailor or bailee. But there can be but one recovery of the full value.

3 Co. 59.
Hill 106.
269.

I judge for the recovery of the full value in favor of either, will have an ^{action} ~~recovery~~ in favor of the other.

But tho' the bailor may recover for the full value, yet the bailee may recover for his special damage. For the recovery of the bailor is no compensation to the bailee for any injury he may have sustained.

2 Rol 259
2 Barn 12

It is laid down in Rol that if both bailor & bailee sue, he who first recovers must sue the other of his action. In the first recovery may be pleaded in bar of the second action. But I apprehend that the mere commencing an action by one of them avails the other of his action or of the same nature. I do not believe that these actions are to proceed together & the parties to sue for the first recovery. I think that he who first sues attaches to himself a right

Case 599
Litch 127

to recover according to all analogies, as in case of actions by master & servant for the same thing. So also in case of an escape there if the plaintiff in the ^{process} ~~action~~ commences an action ~~he~~ ^{he} defeats the right of the sheriff. He who first commences the action

3 Co. 44.
326.
2 Rol 893.
Hill 308.
2. 9. 502

has ~~the~~ ^{the} right to defeat the right of the sheriff. He who first commences the action

If the bailor never recovers satisfaction of the wrong done he can clearly maintain no action against the bailee. But he is unquestionably entitled only to one satisfaction. 22 Ma. 121
Ct. 24. 35
3 Lev. 124
Palk. 11.
Exp. Di. 913.
Hyl. 58

But I conceive that if a bailor first commences an action against the wrong done he by that act waives his right of action against the bailee. He had two remedies, he has now to make his election, & is bound by it. I find no direct authority to this effect. But if the bailor's having commenced his action against the wrong done waives the bailee's right against him, the rule as I have laid it down must be correct on all principle. There is one of the strictest analogies of law to support this rule, in a case of rescue & escape. Exp. Di. 616.
512.
H. 24. 37. n. 11.
Hyl. 59 If the sheriff or the process server has rescued the prisoner, the sheriff is not liable discharged. Hyl. 58

For had his election to sue either the sheriff or rescuers, & having come upon the latter cannot subject the former.

And if the bailor never sues for the full value, he makes himself liable at all events to the bailor. This rule I have no authority to support, but on principle I think correct, if it be true that the bailor's commencing his action against the wrong done waives the bailor of his action.

If the bailor takes the property from the bailee before his election between them is

Page 125
200

determined the carrier may maintain a special
action on the case against the bailor. For the bailor
is a wrong doer.

But whether the bailor in this case
can maintain trover or trespass is a very
different question. Th. Carlee's special prop-
erty is the ground of ^{his right of} action, but I apprehend
that this confers no right of action, as the
bailor and bailor are not strangers. The case
as between the bailor and bailor are not the
bailor's, he has a special property in the
goods in the warehouse case of them, but that
is all. I should therefore think upon this
general ground that the bailor was not
entitled to trover or trespass against the bailor.
But it is laid down in 13 Co. that the bailor
may maintain trover or trespass if he can
show that the bailor's ^{ownership appearing} evidence shall go in miti-
gation of damages.

I conceive in all cases where damages are merely
mitigated the plaintiff has prima facie a right to re-
cover the whole value of the property; but the
bailor in his action against the bailor has not even
prima facie a right to the ^{value of the} whole property. Be-
sides the value of the property is no rule of
damages whatever in this case, therefore I think
the bailor cannot have an action against the bailor
which in its structure is for the full value.

But the strongest objection to this rule laid down in Co. is that the value of the property in such case is no rule of damages whatever. For suppose the damages sustained by the bailee was greater than the value of the property, can the damages be aggravated?

The damage sustained may be much greater or less than the value of the property bailed & such damage is the ground of the action, but it cannot be measured by the value, I therefore conclude that a special action in the case is the only ^{proper} action in this case.

If the bailee delivers the property to a ^{3d. party} contrary to the bailor's orders the former is also liable guilty of a conversion, & the bailor may maintain trover without demand.

As to the form of the action which the bailor may maintain against the bailee, the general rule is that he can maintain no other action than detinue or some action on the case. A special action on the case however, or *assumpsit*, according to the nature of the case.

When the bailor is injured by the neglect of the bailee, the former may sue either *assumpsit* upon the contract *express* or *implied* or in tort for the neglect.

8 Co 140. The answer is that the plaintiff is
 Public 191. in right the master in charge of the vessel because
 his profession is negligent, & he has been guilty
 of a wrongful act.

~~There~~ There is an exception to the rule where
 1 Inst 374. the master willfully destroys the goods for
 5 Co. 146. this act extinguishes the bailment, extinguish-
 11 Mass. 248. es his character and rights as bailor.
 2 Inst. 555. If then were lost by accident or neglect tres-
 2 S. R. 455. pass will not be the destruction of the goods
 3 S. R. 46. must be voluntary on the part of the bai-
 5 Mass 266. lor to ground an action of trespass upon

[Faint signature]

Inns & Inn keepers

By the 8th any person may lawfully exercise the employment of an innkeeper, unless it be prejudicial to the public. For the 8th & 9th are established by the voluntary acts of individuals, & not by law. He therefore who establishes an inn is liable to all the duties of a C.L.

But by the 8th & 9th in consequence of great numbers of them may become common nuisances, & the keepers may be indicted for them as nuisances.

Inns by being disorderly also become public nuisances, & the keepers of them are indictable.

And these rules of the 8th & 9th still remain in force for houses of this nature regulating the establishment of inns, tho' ale houses are required to be licensed since the reign of E. 3^d.

In Bonn. & most of the other German states no man can establish an inn without a licence procured according to stat.

Stat. Bon. c. 1.

A licence in Bonn is granted for one year only by the respective City of Bonn. & is recommended by a board of officers in each town.

Under our stat keeping an inn without a licence is punishable by a fine doubled for every offence increasing in arithmetical proportion.

By our stat that disobedience of any of the laws respecting the laws regulating the inn keepers

subject the innkeeper to the losing his license
suffered by the selection until the next of
which he may be taken away or removed.

This is a great measure, notwithstanding the in-
capacity of an indictment, but I trust that the C. L.
power of indictment still remains.

2 Co. 84
3 Bac. 183 The duties of innkeepers, ^{chiefly} extend ~~generally~~
only in the entertainment of travellers & holding
their goods.

If an innkeeper receives a traveller without any
cause to receive a traveller upon a warrant
price tendered, he is not only liable to an
action on the case by the individual injured
but to an indictment, for it is a public offence.

2 Co. 32.
3 Bac. 181. The case of an innkeeper extends not to
the person but nearly to the goods of his
guest. If then the guest were stolen at the
inn the innkeeper is not liable, and for
goods lost he would be.

1 Bul. 25.
3 Bac. 182. If an innkeeper sells to his guest any health
ful food or liquor, he is liable to the guest
on an action on the case. The rule is the
same if such food or liquor be given for
a secret.

The principal rule relating to the innkeeper
is liability for the goods of the guest having
been given under bailment.

There are however some few other
exceptions.

It observed that if the guest requested

Inns & Innkeepers

to have his horse put to pasture, & he was lost in consequence thereof. The innkeeper would not be liable, but if the horse were lost by the want of a sufficient fence or any neglect the innkeeper would be liable.

The innkeeper is not discharged from his liability as to the goods of his guests by sickness, absence or insanity. In the two first cases he should provide proper persons to superintend the performance of his duties, & if insanity were an excuse, he might as well not demand them.

But an infant innkeeper is not chargeable as such. If he could subject himself his privilege as such would be injured. But that is regarded anterior to contract. He may be liable for his frauds or personal acts, but not as innkeeper.

But if an innkeeper refuses to receive a guest on account of his house being full, but the guest insists upon staying, and agrees to take his chance, the innkeeper is not liable for his goods. This is the same as the case of the con. car. before mentioned.

If the host requires the guest to lock his apartment, & he refuses to do so, & the goods are lost in consequence, the question whether the innkeeper is liable is one on which the authorities are divided.

According to one view of this question

it appears to me highly unreasonable to subject
the innkeeper. His duties, nothing more than
the most reasonable caution, it cannot be
that the innkeeper is to keep the key of the
apartment which is at the command of the
guest.

8 Co. 332

2 Bac. 183 does not discharge the innkeeper if the goods
are lost by the door being left open. This
seems reasonable, for the guest is not sup-
posed to know the house, and it is the duty
of the innkeeper to inform him.

8 Co. 332

1. Moore 158. of subjecting the innkeeper that he should
5 Co. 243 know the contents of the guest's trunk &c.

An innkeeper is liable as such only in
favor of travellers, and such as board at
his inn at the price usually charged to
travellers. He is not liable for the goods
of his neighbor who occasionally lodges
at his house, nor for the goods of those
who board at the usual price of private
boarding houses. This rule means only
that he would not be liable as innkeeper,
not that he would be free from liability
for want of proper care due to such per-
sons.

May 120

1. 2. 338

2. 2. 183

5 Co. 233

4. 1. 179

The innkeeper is not chargeable for any
goods in the house, unless, for which he
is not liable the house. But this rule sup-

poses the absence to be such as that the answer - appendix -
is not regarded as a guest

But he gives no hearing which he does receive a protest, he is hostile, tho' the owner has left the inn & is not a guest.

As if a man travelling to B should leave his horse at A, & take the stage, and agree to pay for the keeping, the innkeeper would be liable as such. affences

themselves, or the number of the guest.

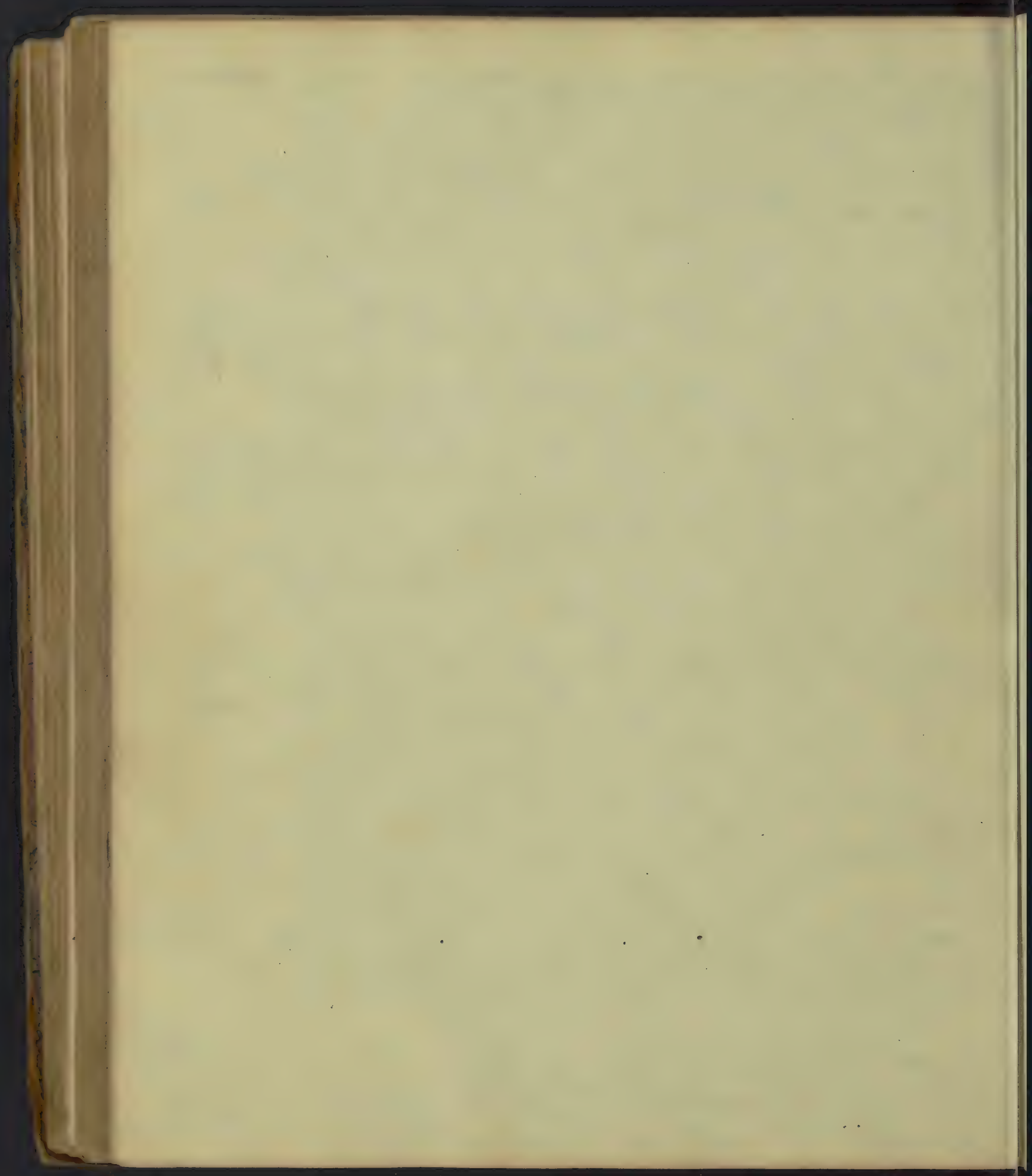
Observed that an unkeeper might retain 2nd. 85.
the reason of his quest for the unroll bill, 3rd. 288.
the house for his hobbies only. 3rd. 185.
3rd. 388.

And if the guest without permission leaves
the inn without paying his bill the innkeep-
er may as first suit release him and also his
horse. He thus has virtually a night and
day sleep this is allowed by law. If however
or he once permits the guest to depart
with his horse trusting to his personal credit
he cannot relate them, he has lost his
lien. But where he retains a horse Moore &

an other animal as a hen, he has no right to Pl. 5.5.8.

we have a party determined has no right
to use the thing sustained it being in the
custody of the law, which does not permit
it to be used. —

it would be strange to let the title of a guest if
the keeper were unchangeable as is true, & it not such
in the list of friends. — 2nd Edn, 1880. vol. 305. Huller.
101. 3 Bar



Appendix

There is considerable controversy in the authorities upon this question - but the latest decisions have settled it beyond doubt that if one person make a promise to another for the benefit of a third that third person may maintain an action upon it - vide 8 Mod 114 - ^{Combs} 219 - See also 3 Bos & P 129 note in which a case from Cowper 425 is cited to this effect the plaintiff declared against the defendant and upon an instrument in writing dated &c - and to allow him £50 per annum the instrument produced in evidence was a certificate addressed to the bishop whereby the defendant nominated the plaintiff his curate & promised to allow him 50l. per annum - Upon this evidence the plaintiff was after argument held entitled to recover against the defendant. See also 1 Johnson where the doctrine is expressly recognised page 40. - so also case from 1 Vent 318-332 - For authority to establish the opposite vide 1 Vent 6. 1 Ven. Abr 133 - and overruled. - 3 Lev. 138 1 Lev 235. Question

Suppose the following facts can the assignee in the contract support an action -

A - Cogg

Boston Aug 8. 1814.

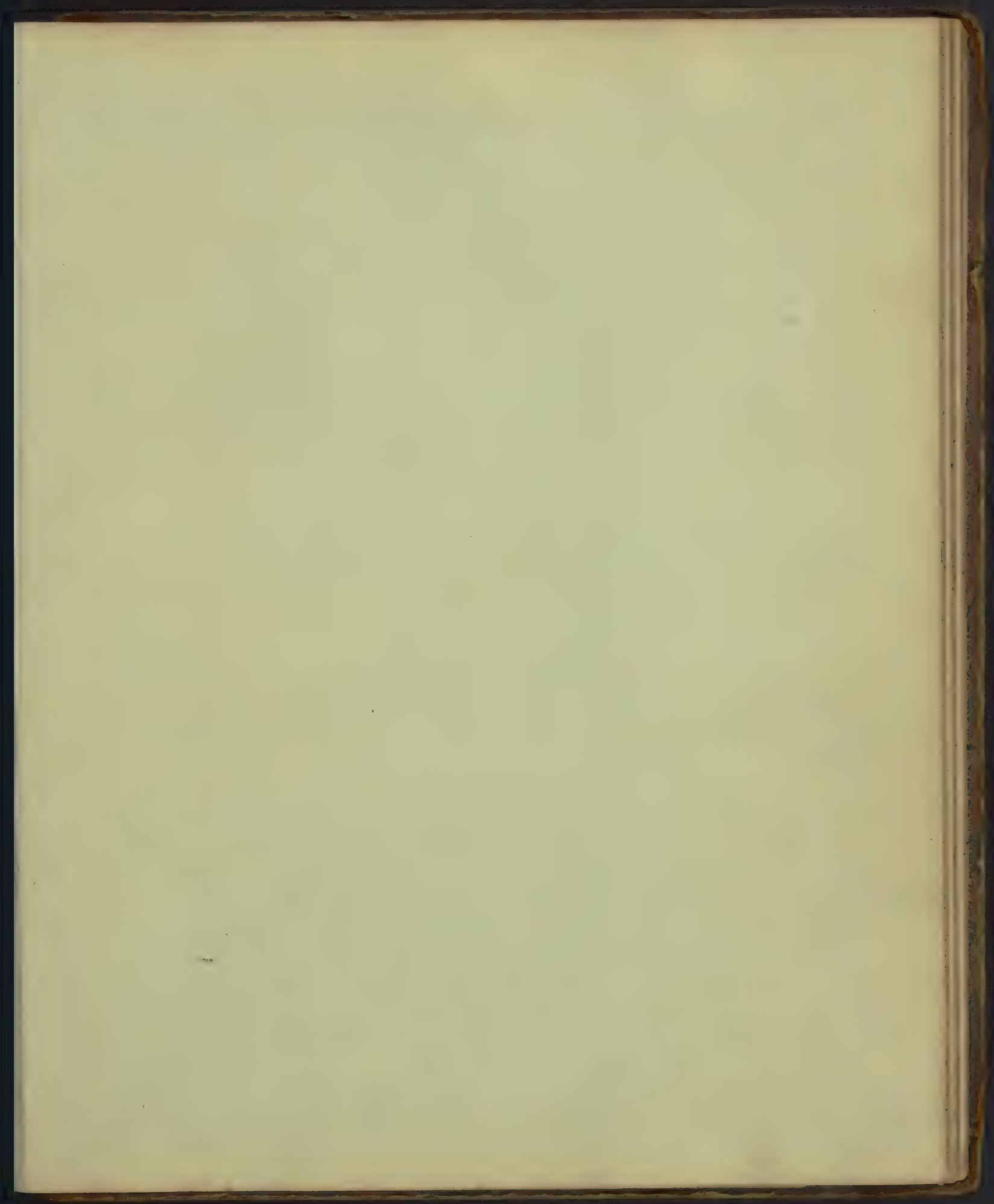
Please to pay to the order of B - any balance which may be due me in settlement of accounts - not yet rec'd of him.

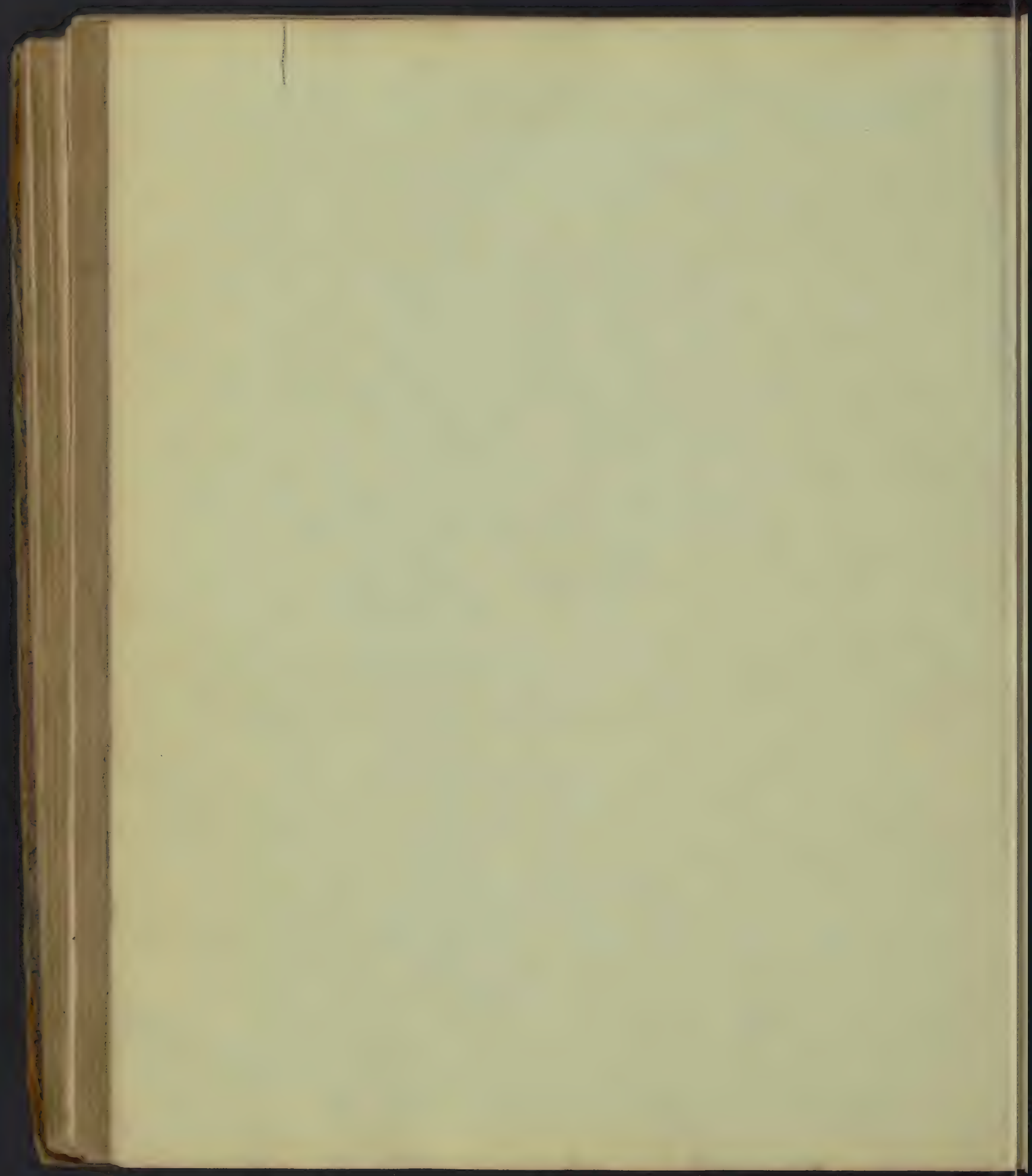
Signed C.D.

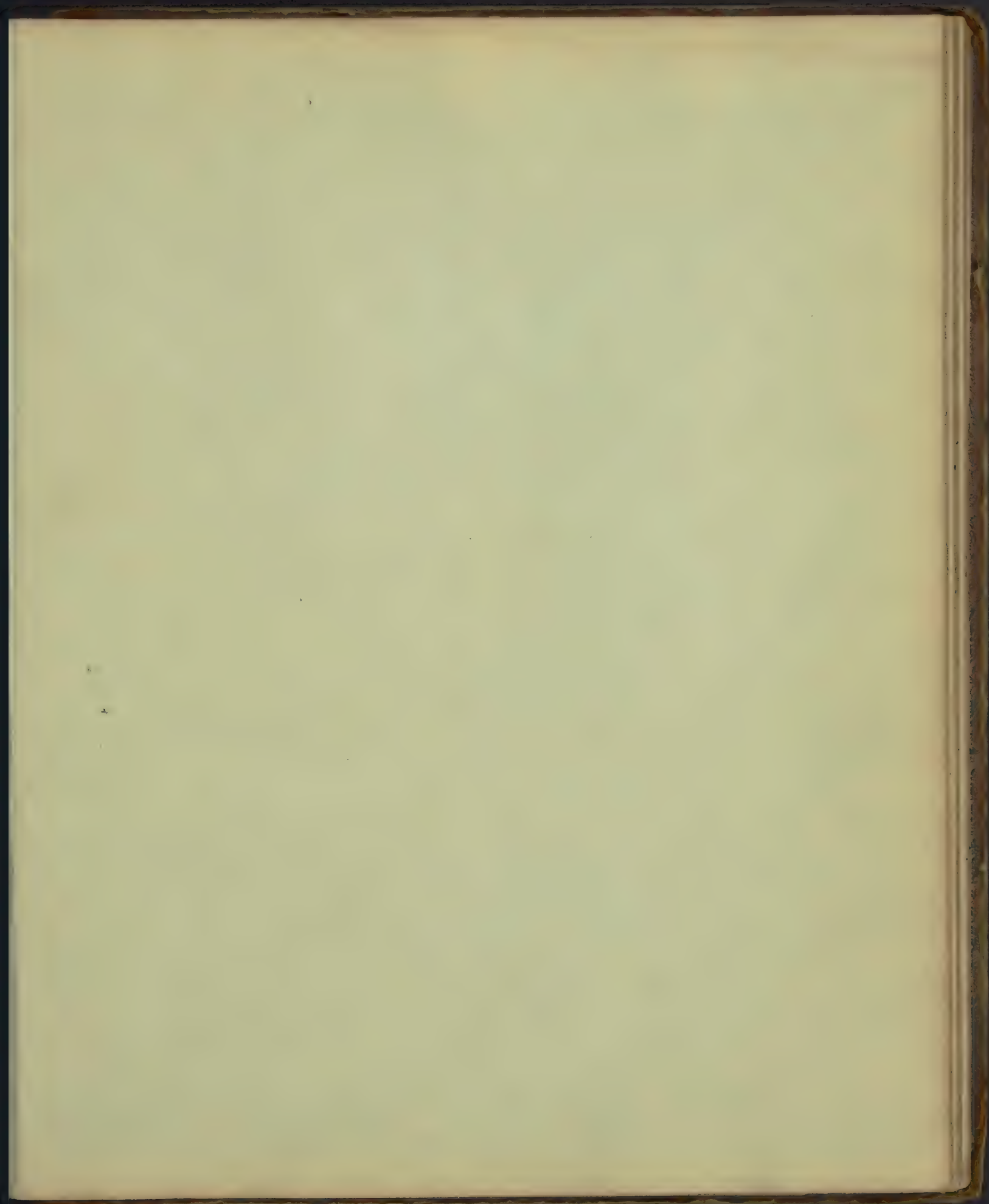
Boston Aug 8. 1814. Accepted to pay what may be due the final balance due C.D. or settlement of accounts -

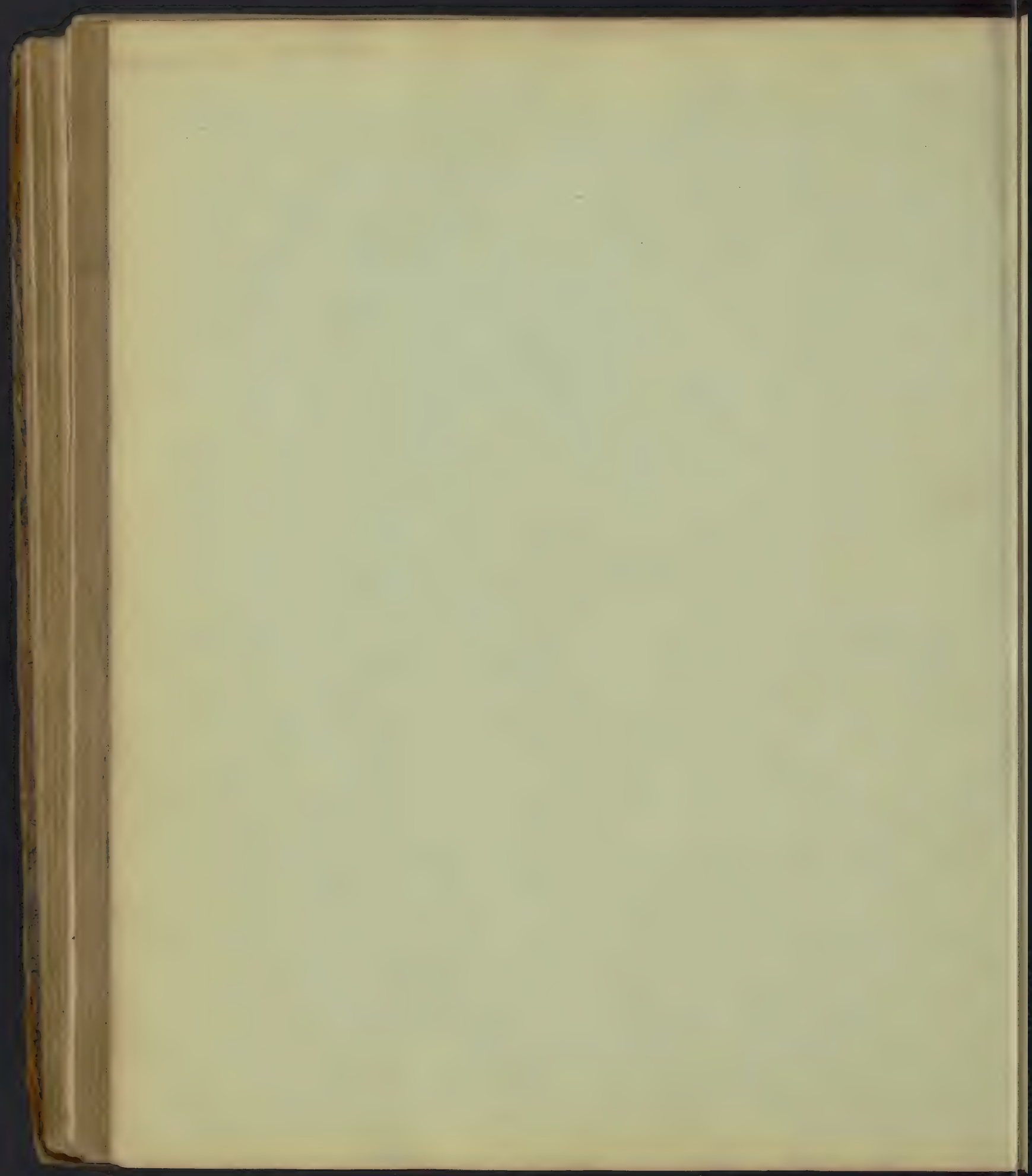
Signed C.F. -

That B may maintain an action against A vide 2 Bl. R. 1269. 1 Bl. R. 239. 4 Esp. R. 203. 2 Chaf. Rep. 293.





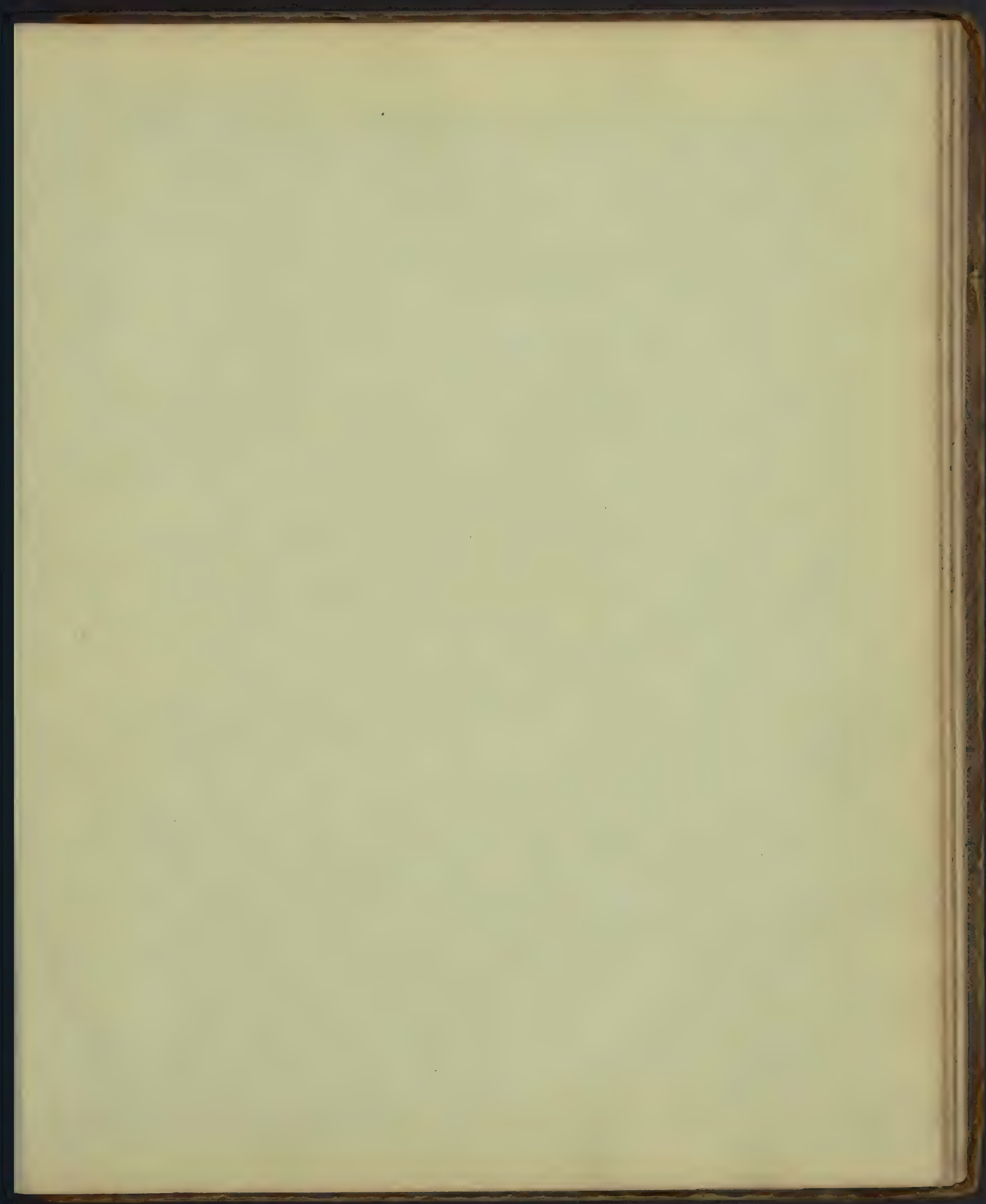


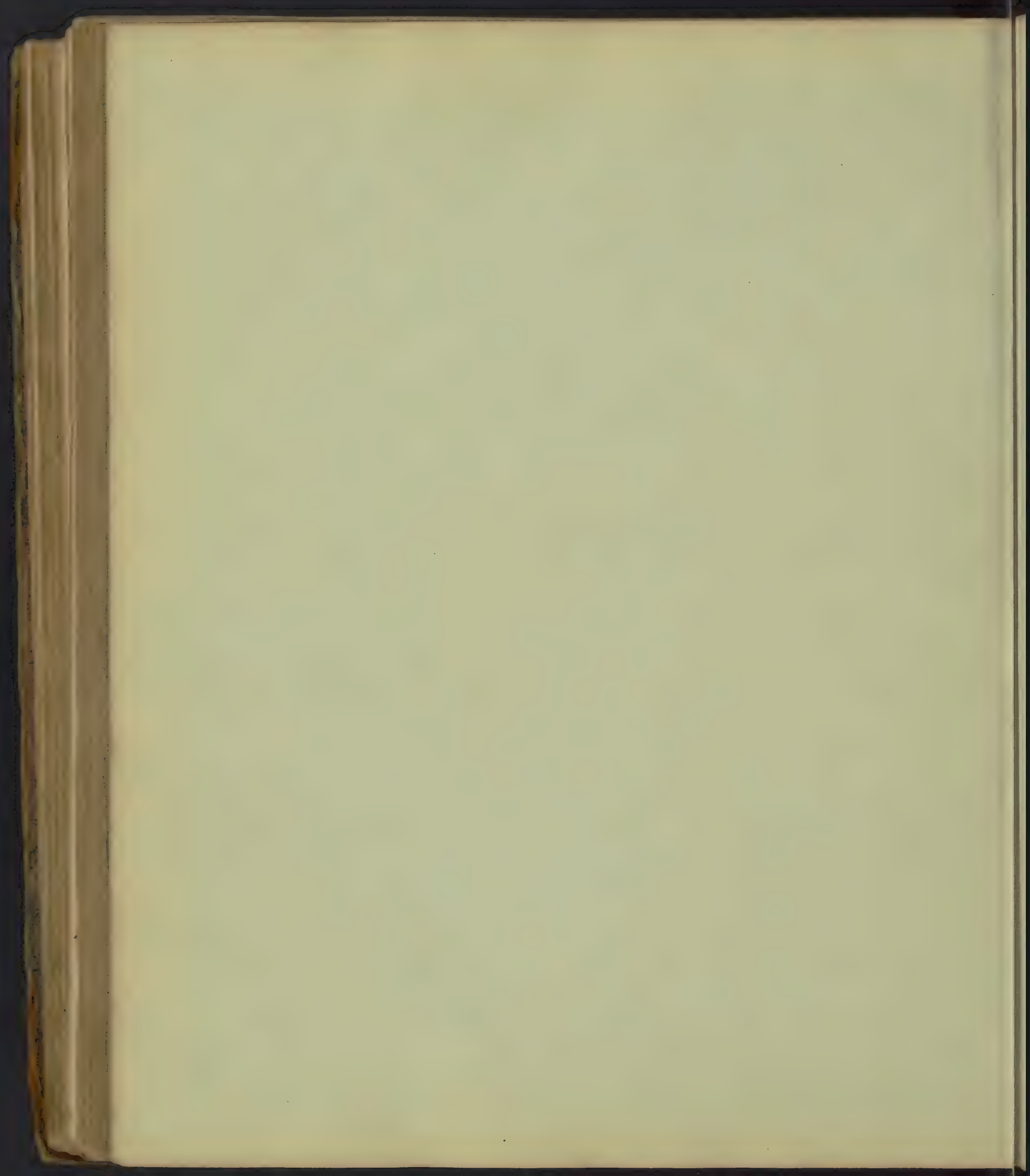


Appendix to 7 Bills of Exchange

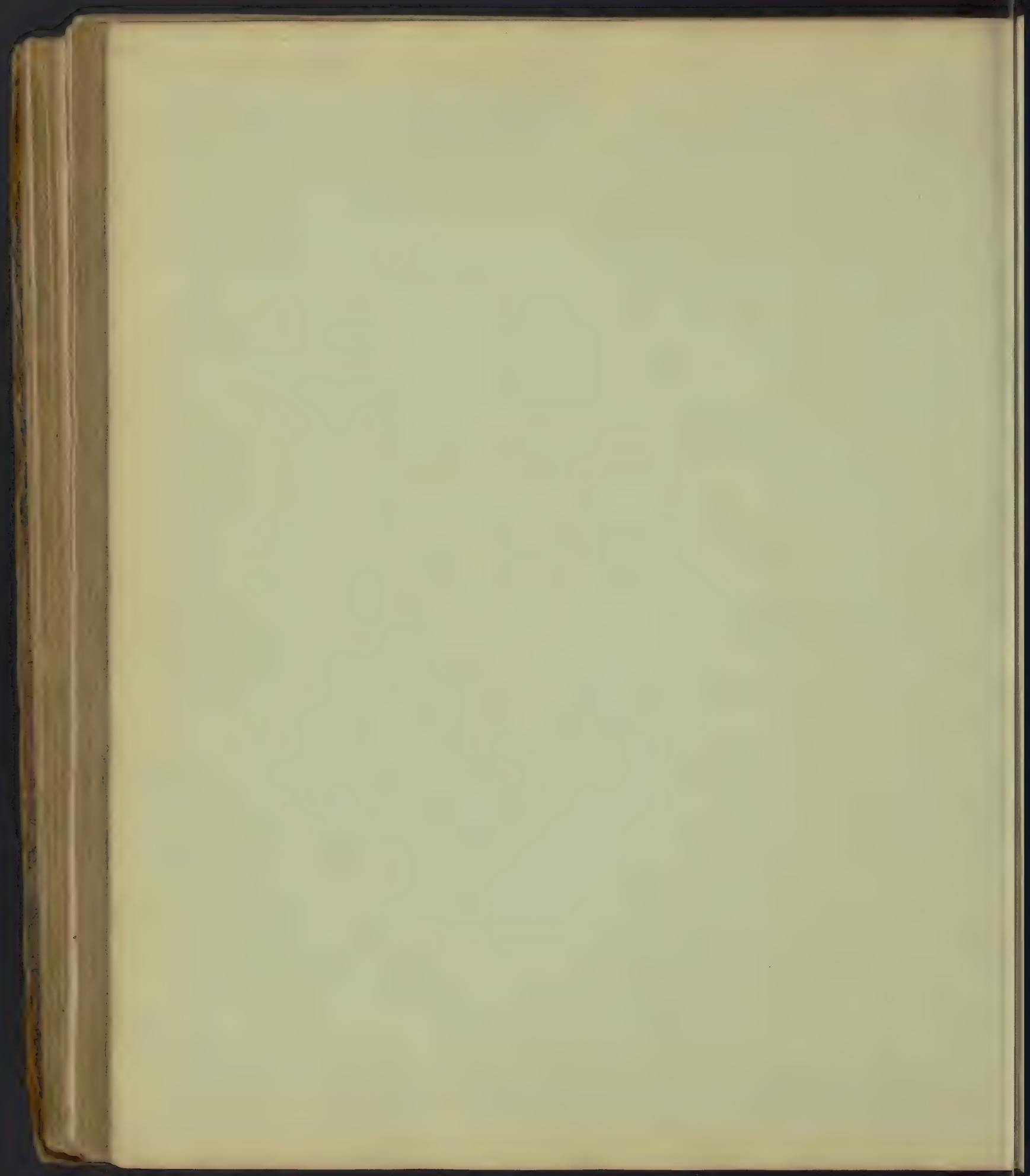
Page
1

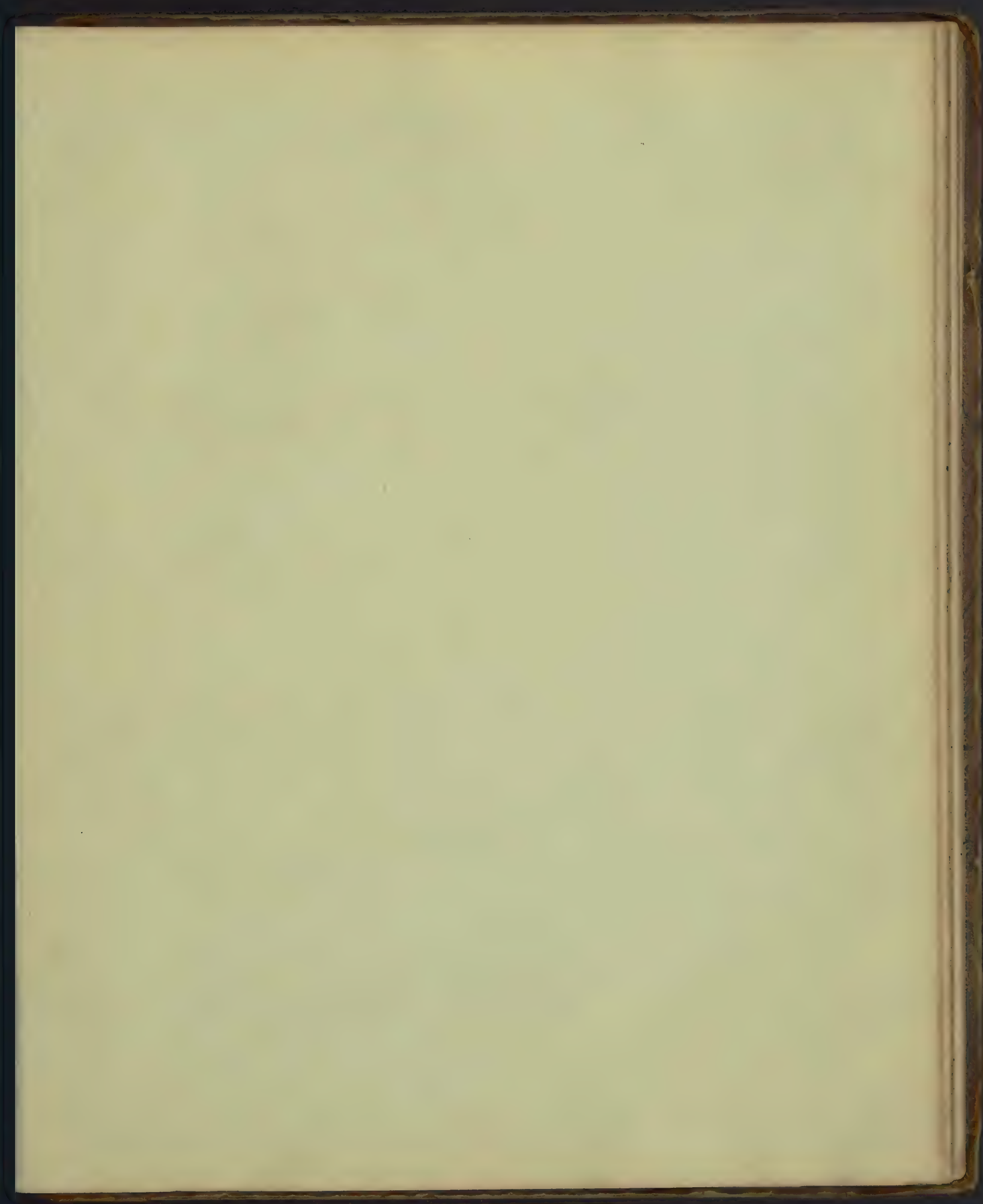
I have considered such a bill, a foreign Bill
General Government have jurisdiction over an affair with
foreign countries. I do not wish to see the
same thing in the Court of the President.

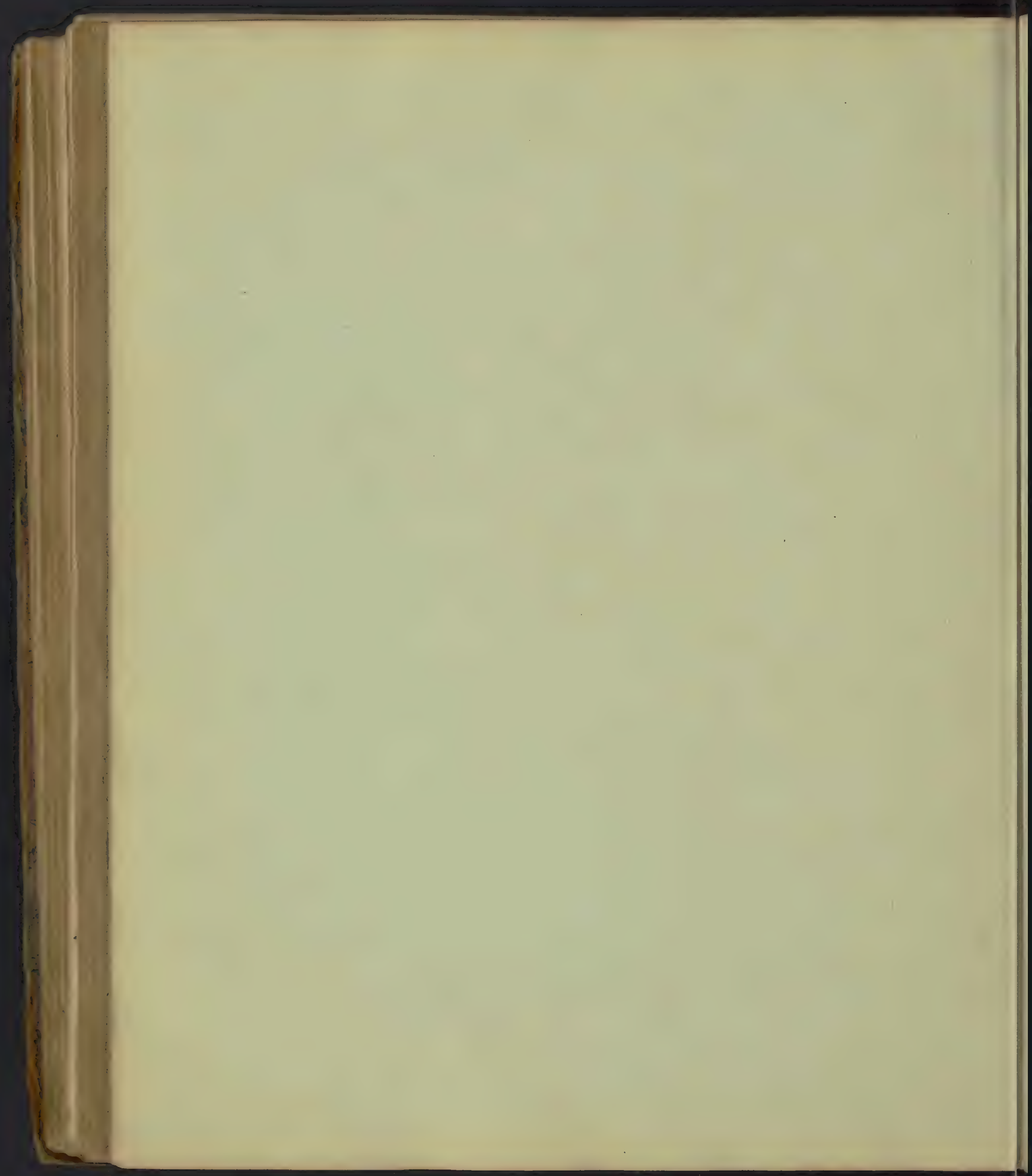


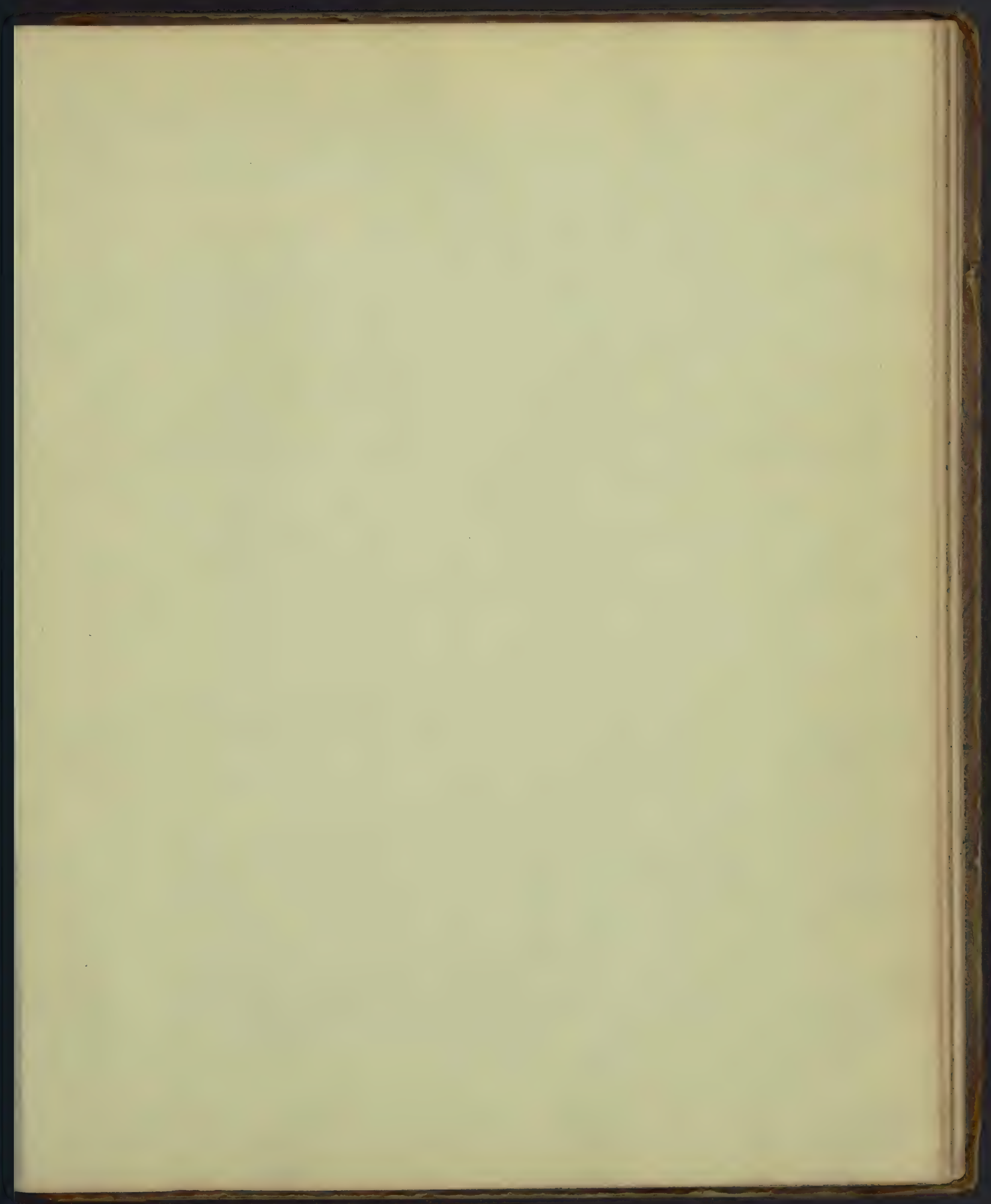


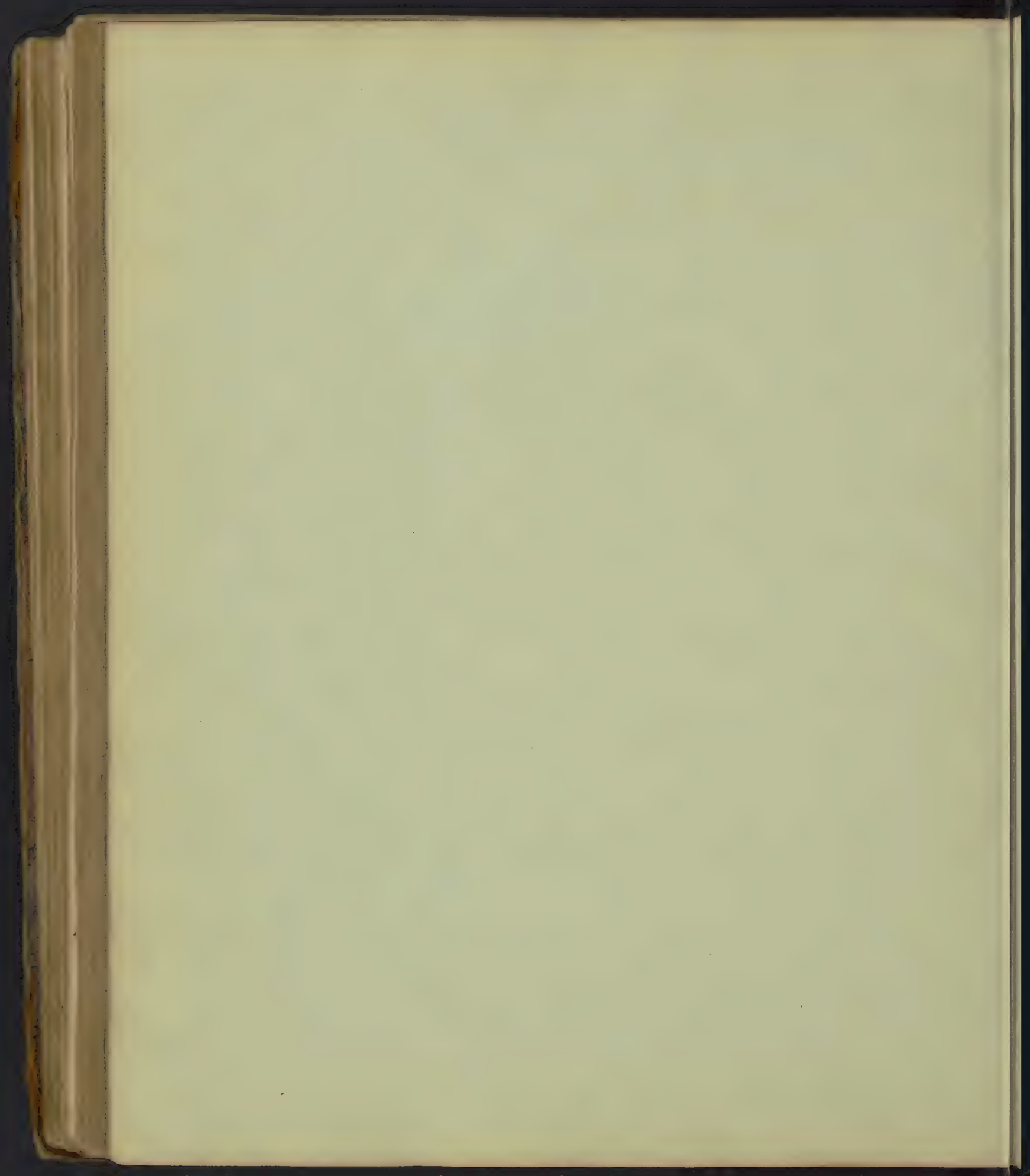


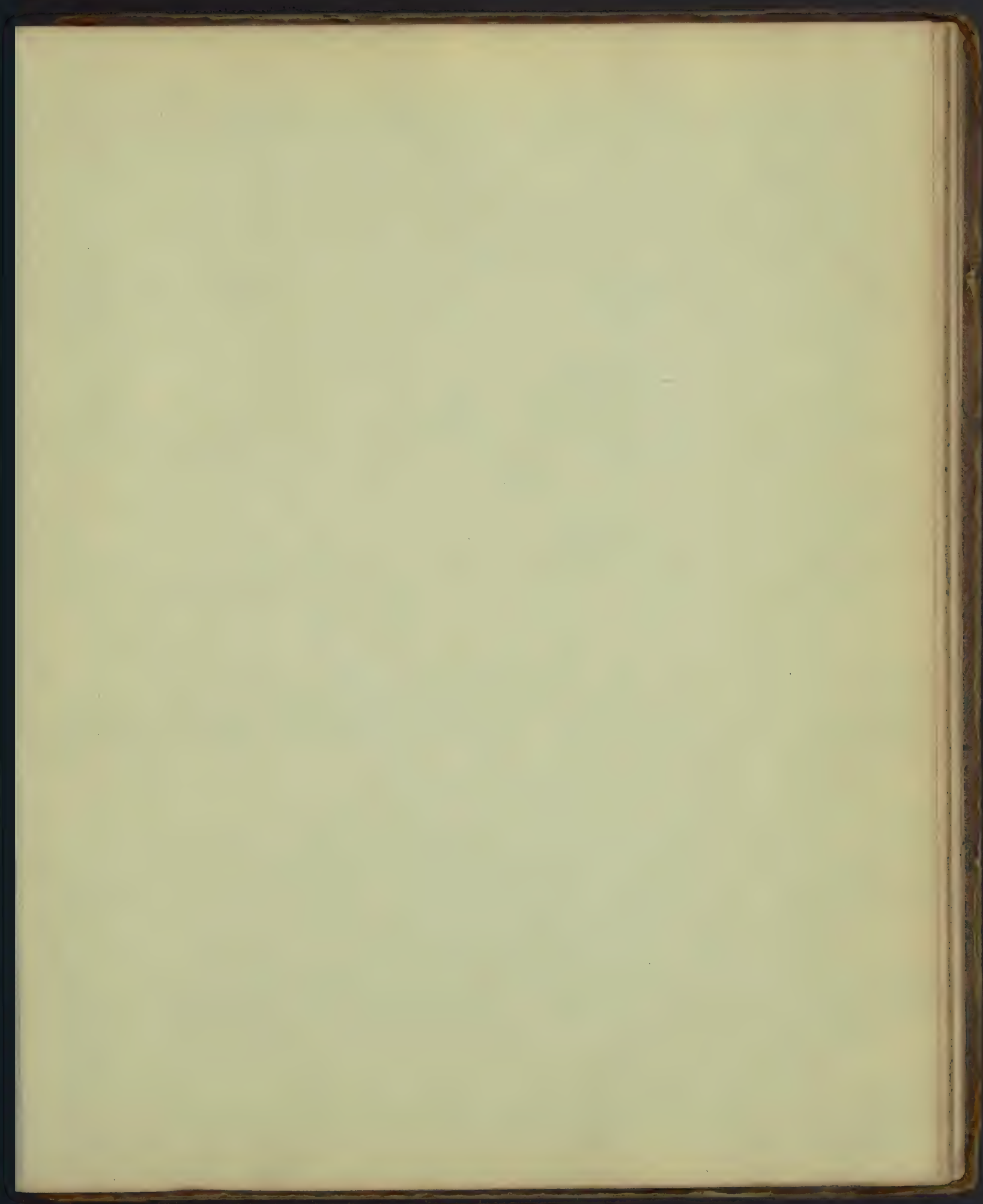


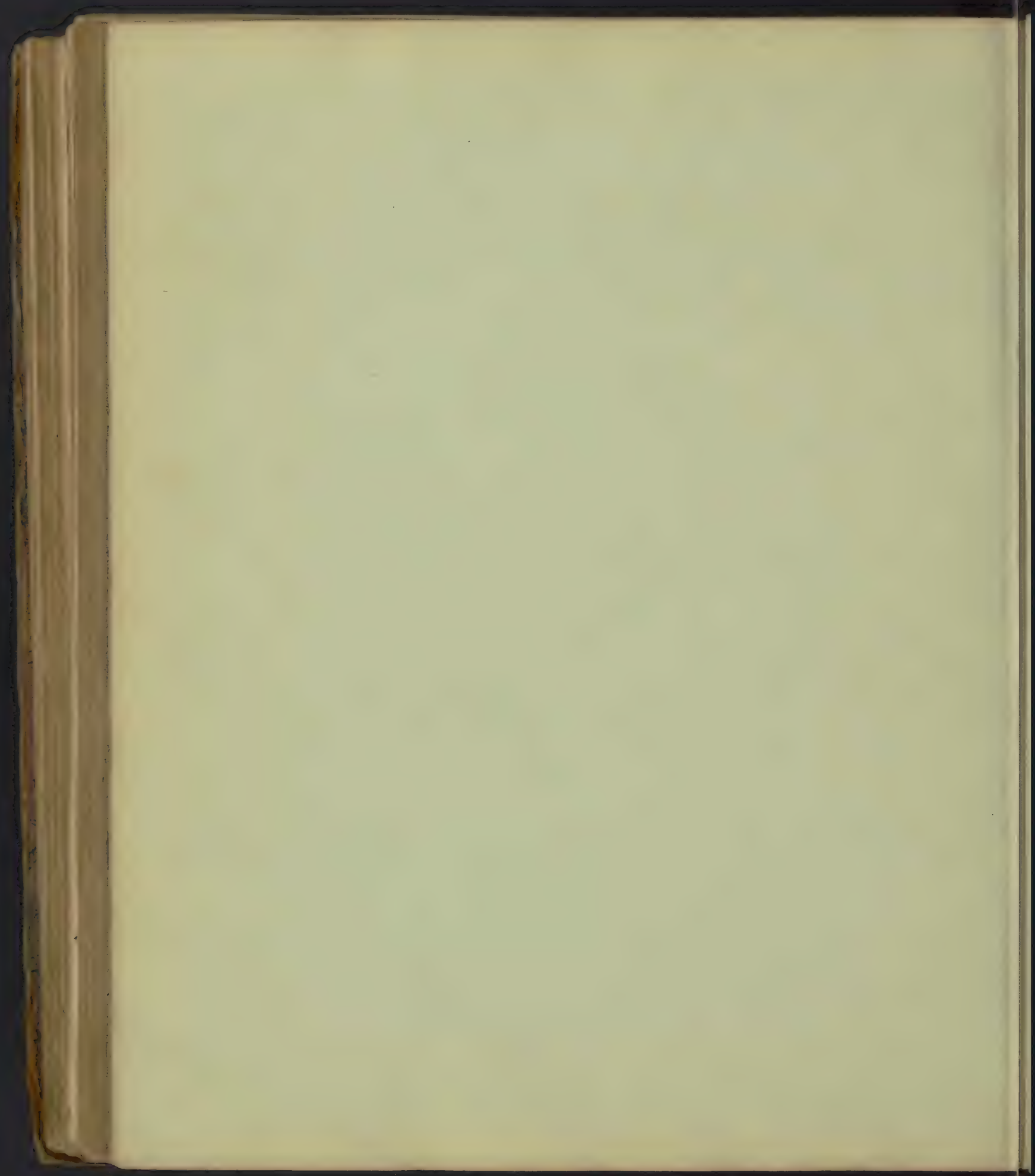


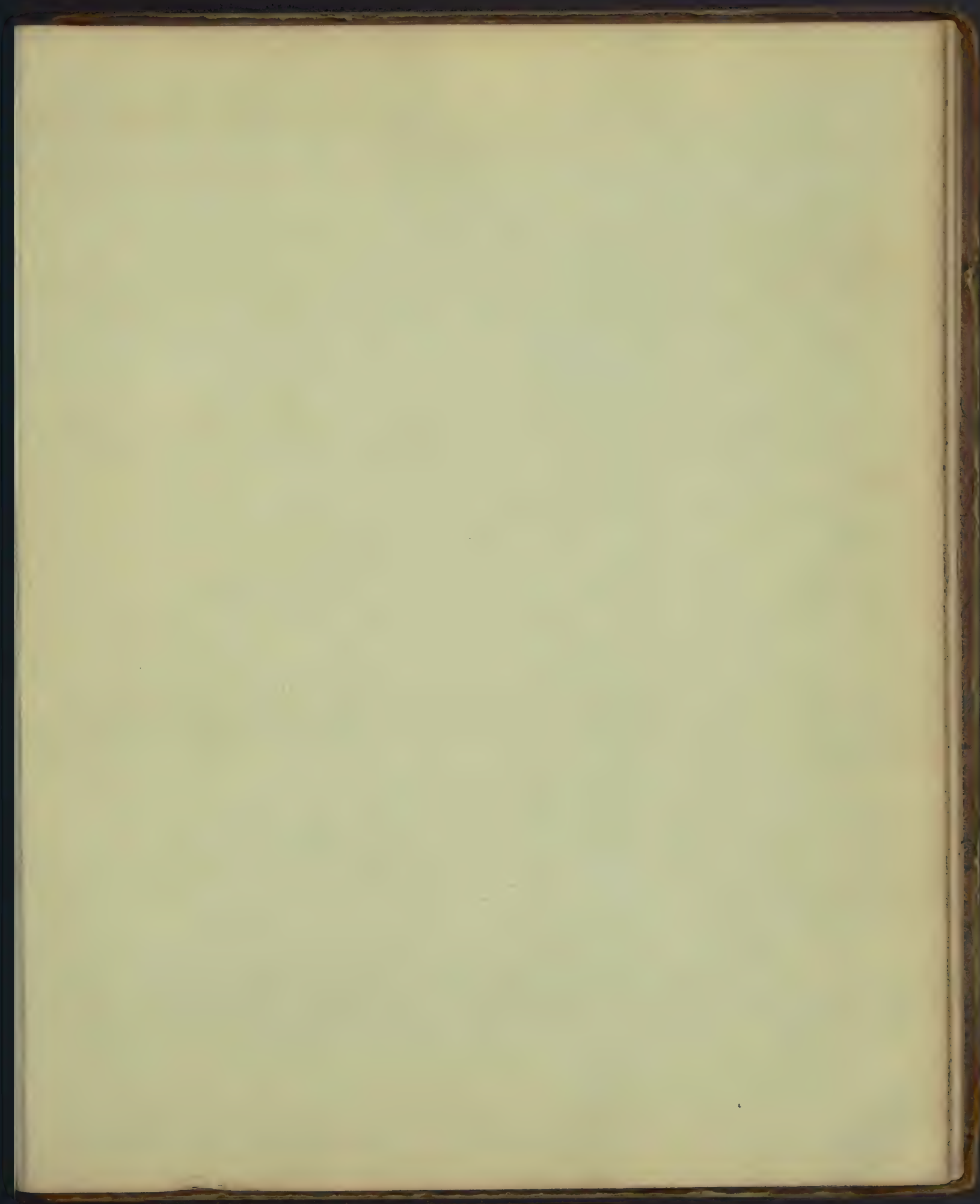


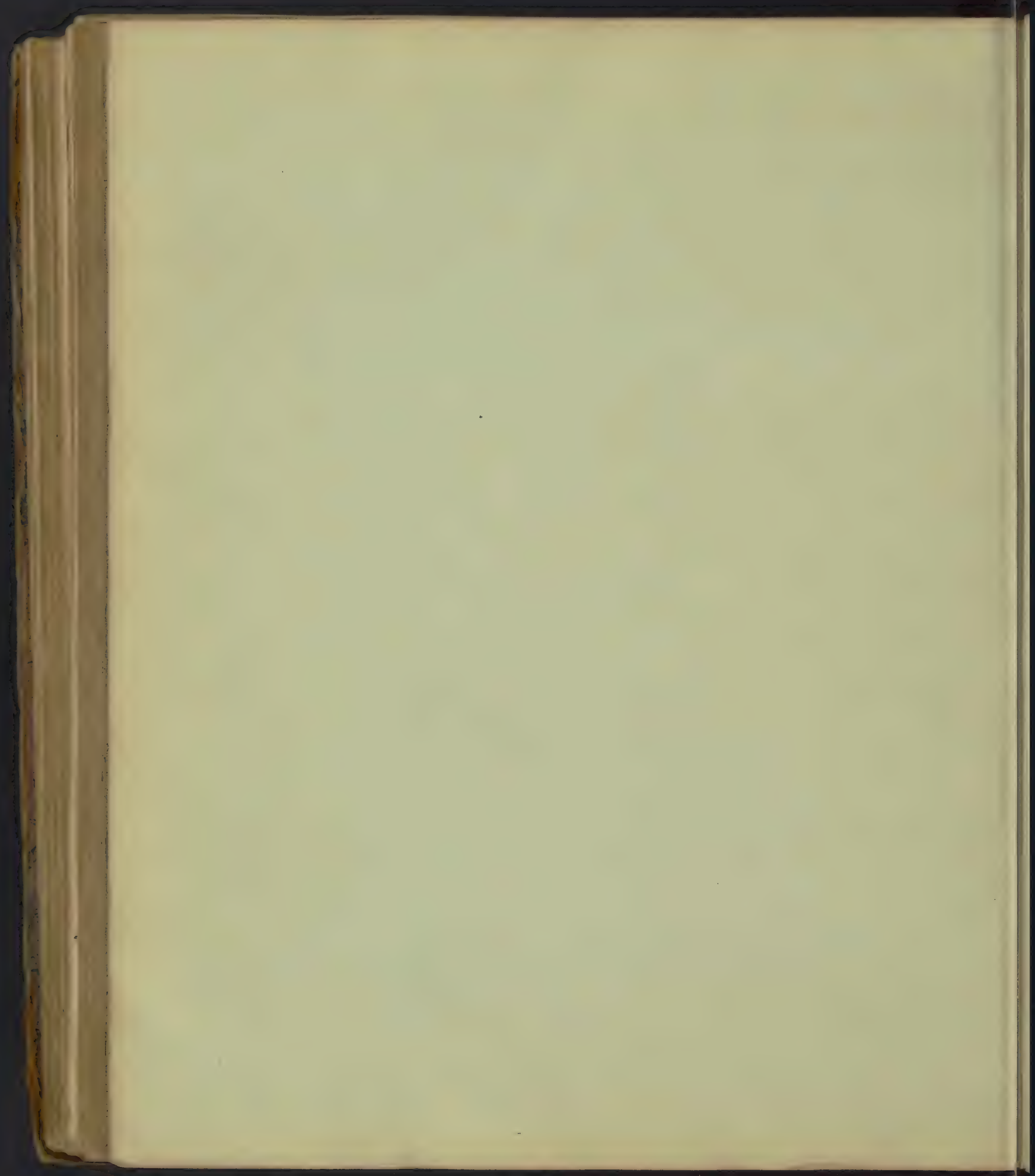


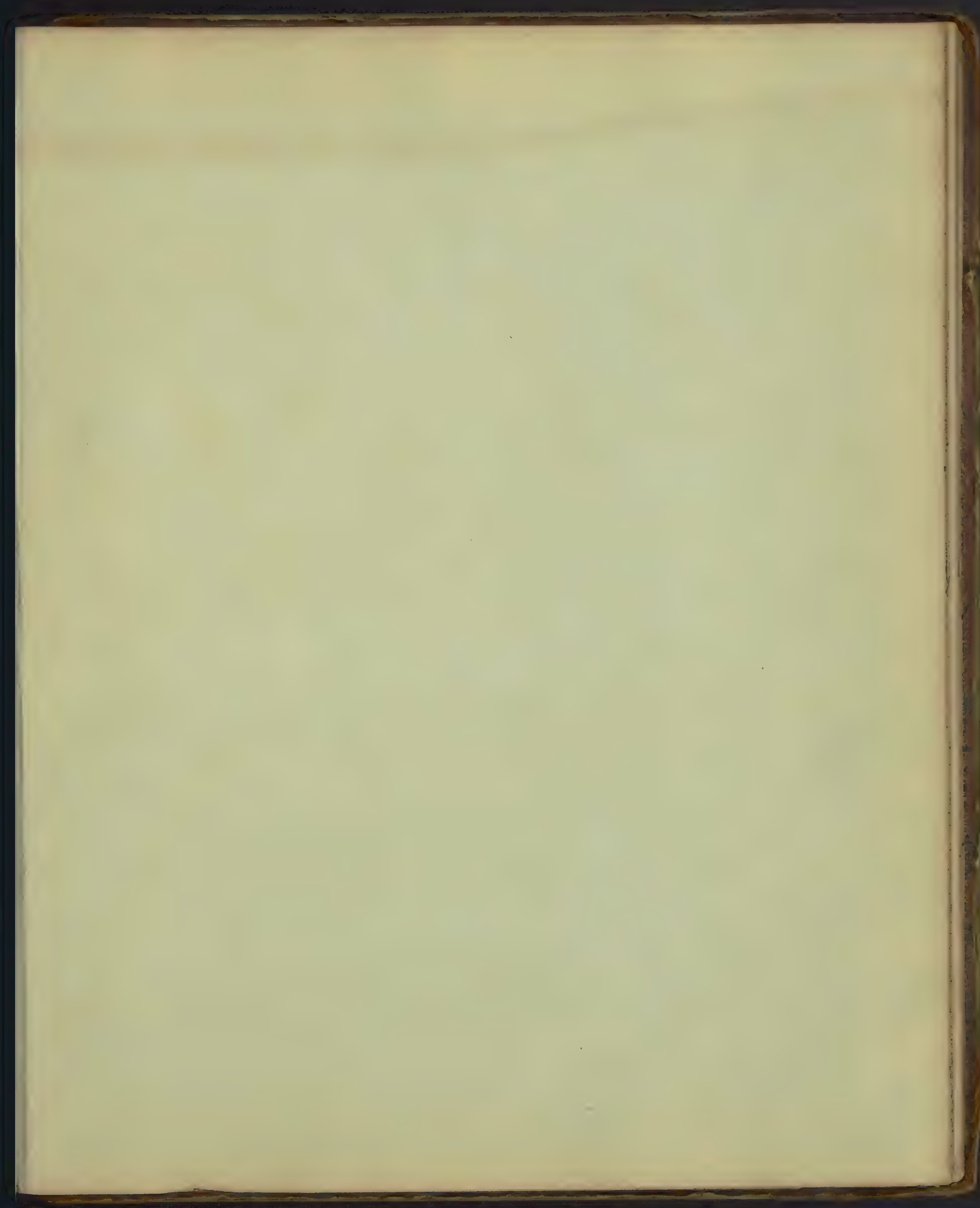


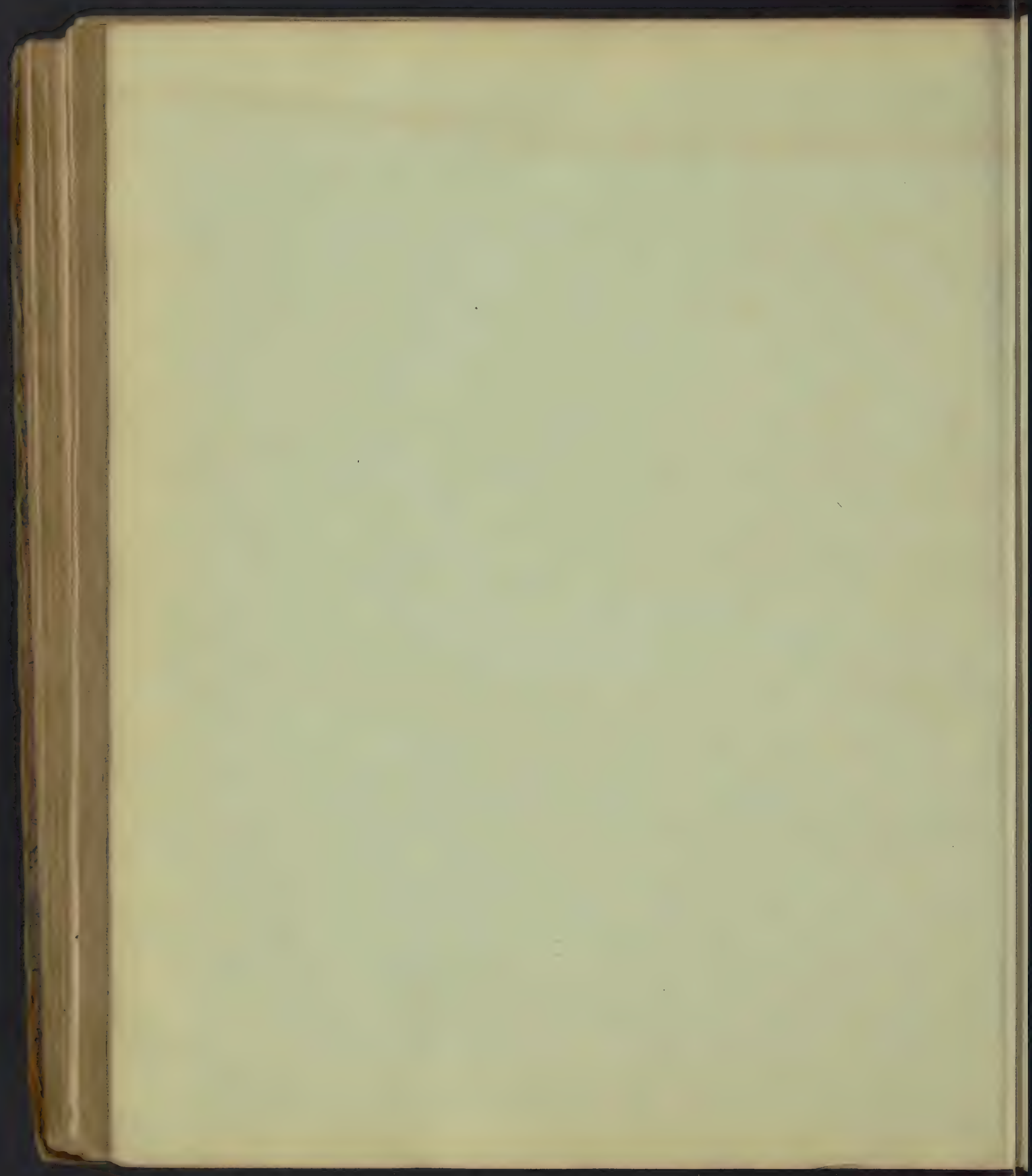


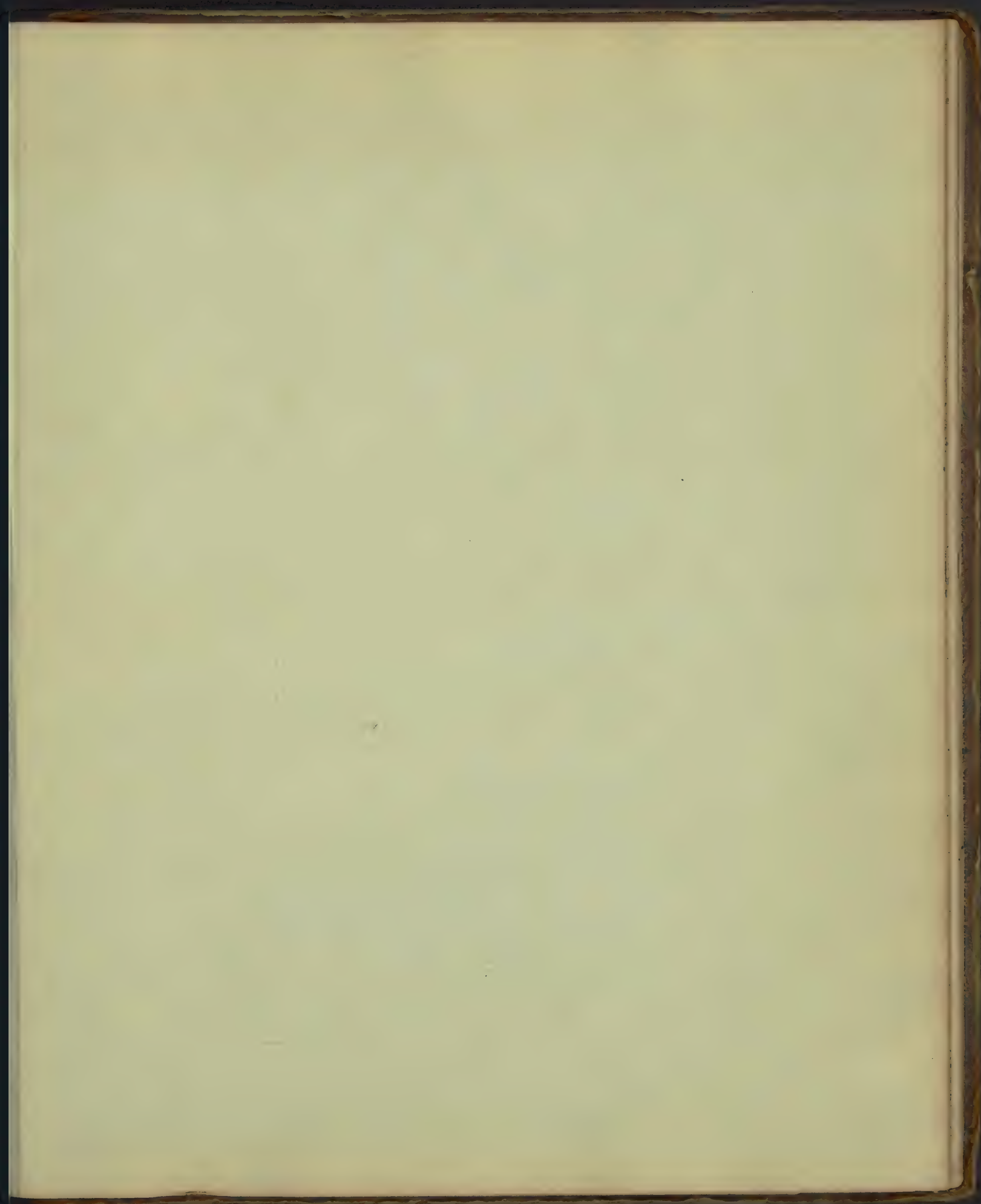


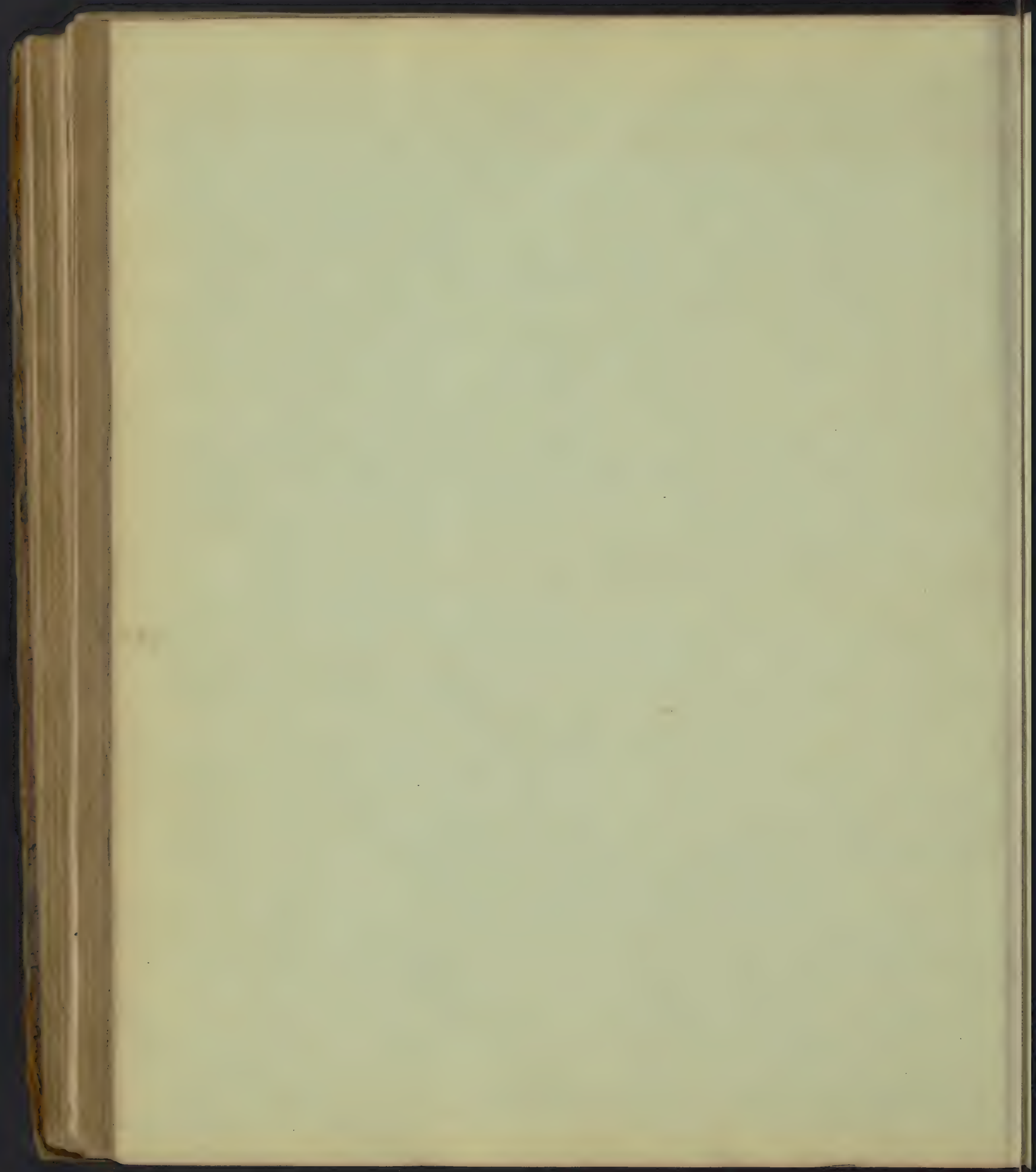


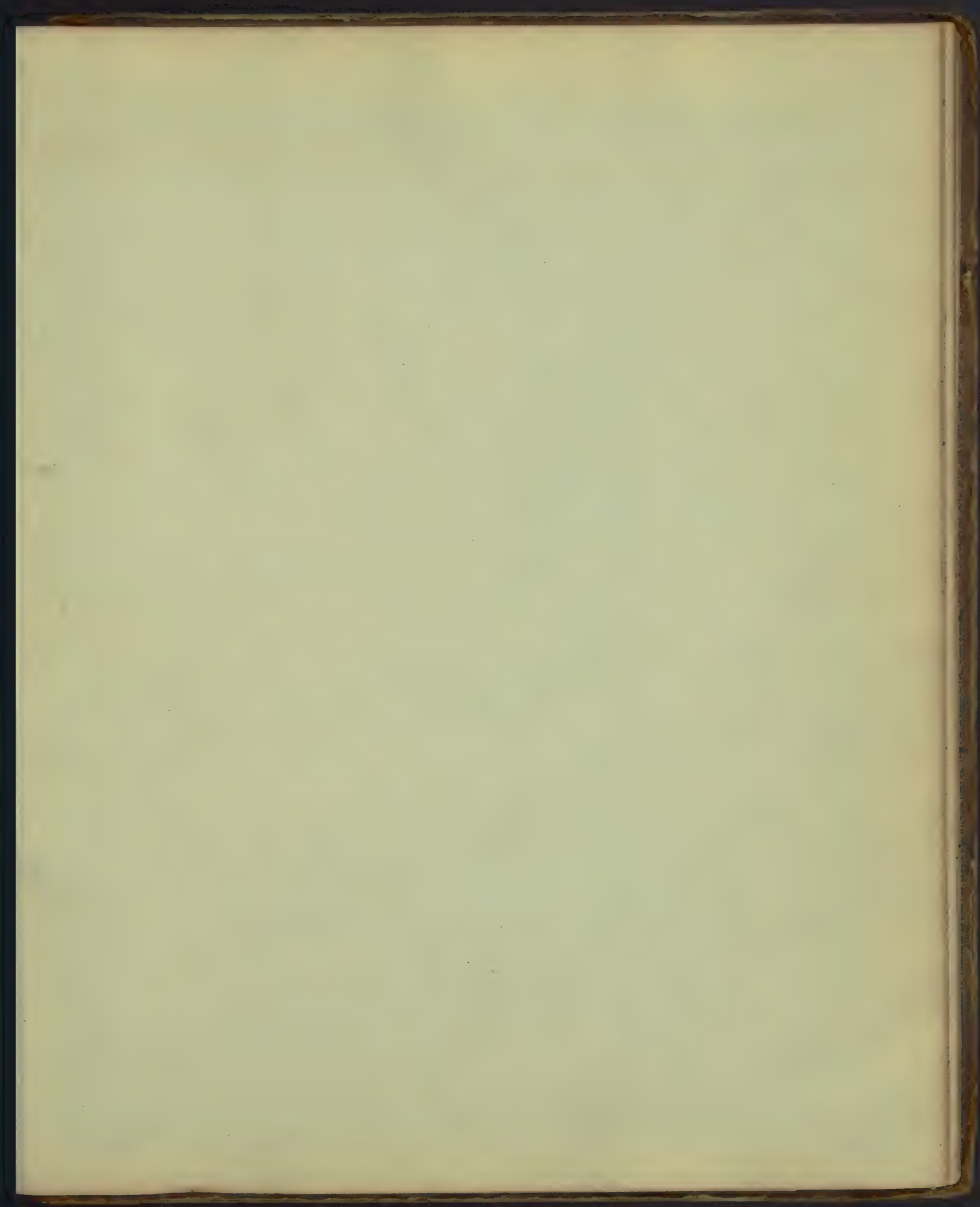


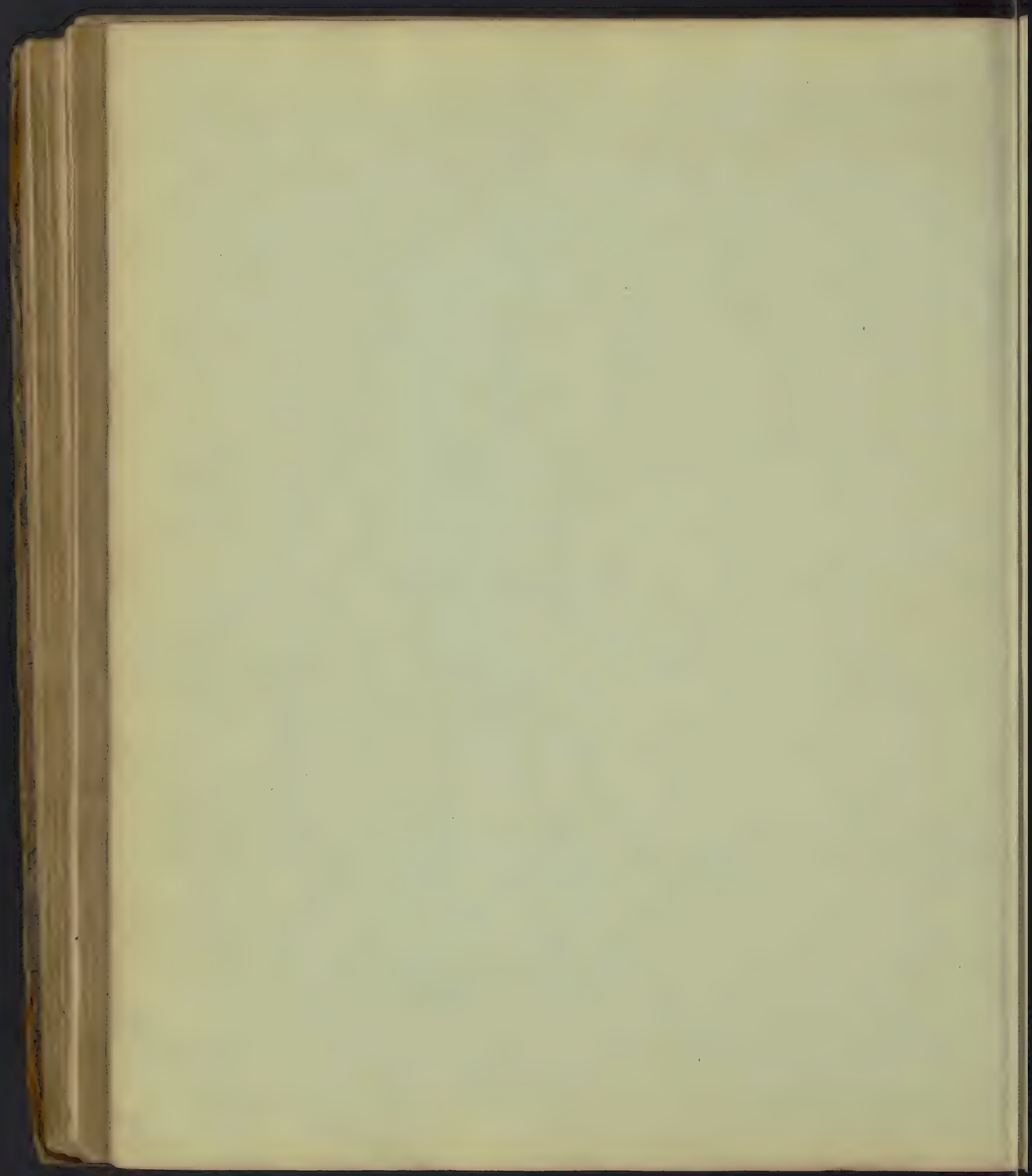


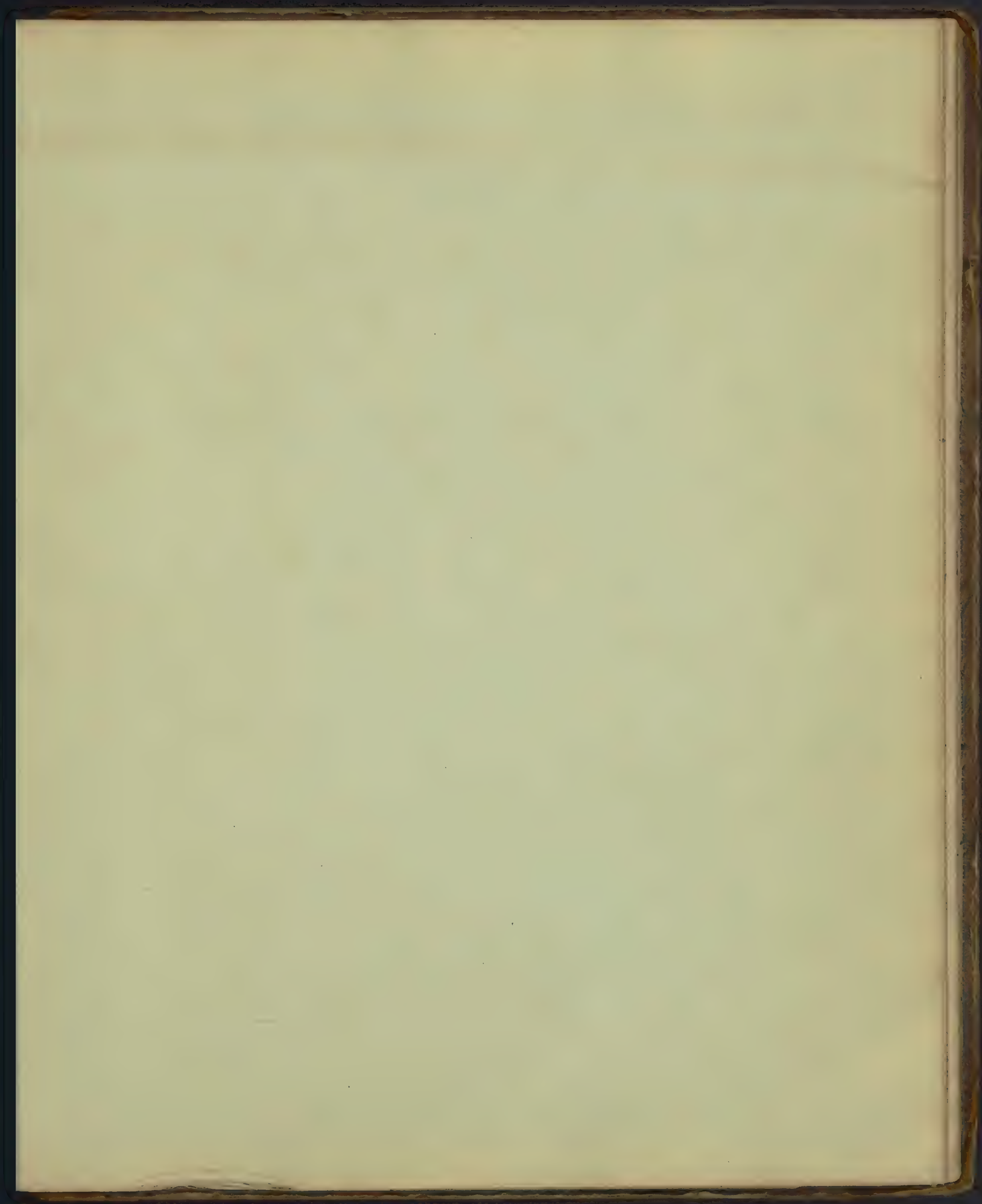




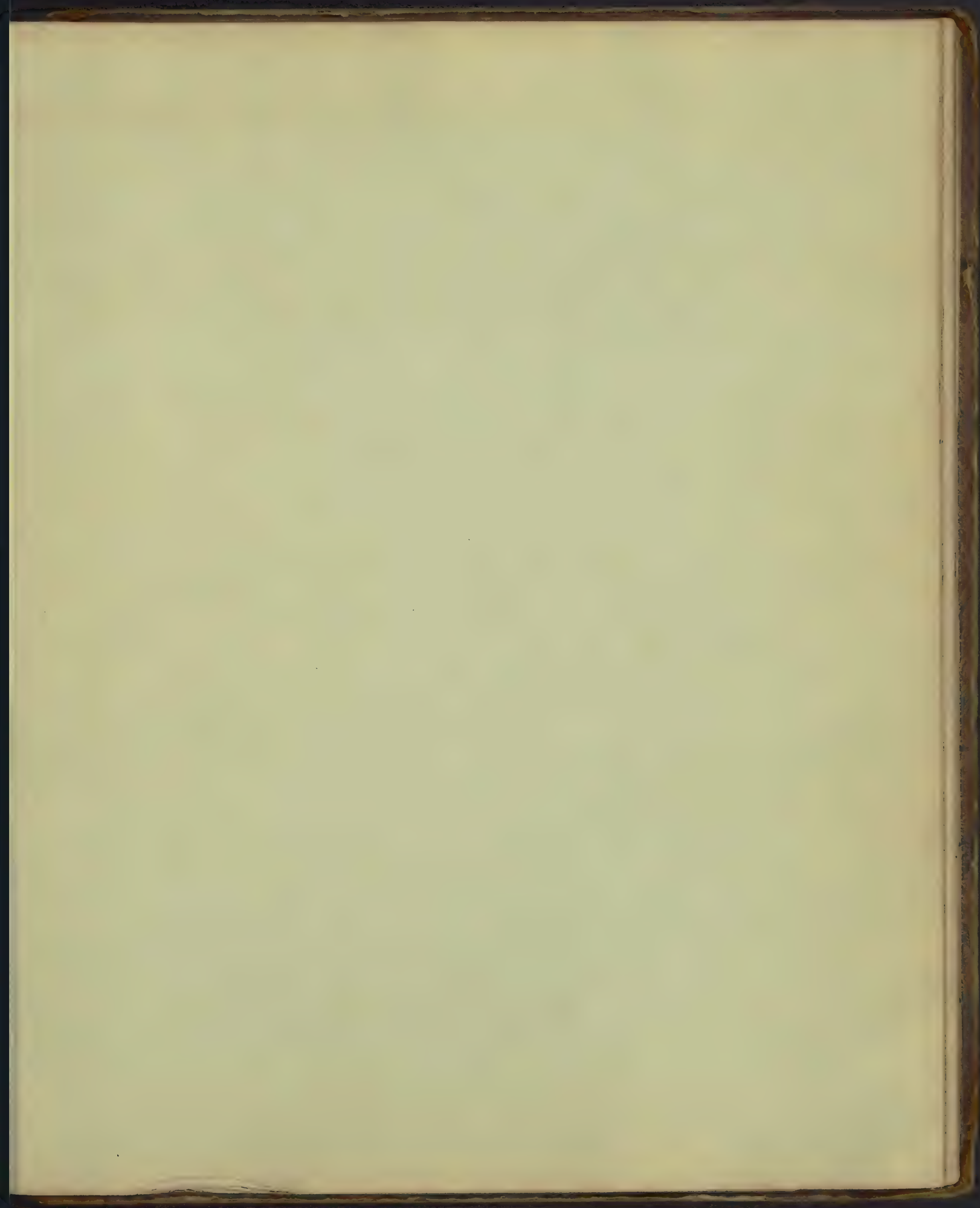


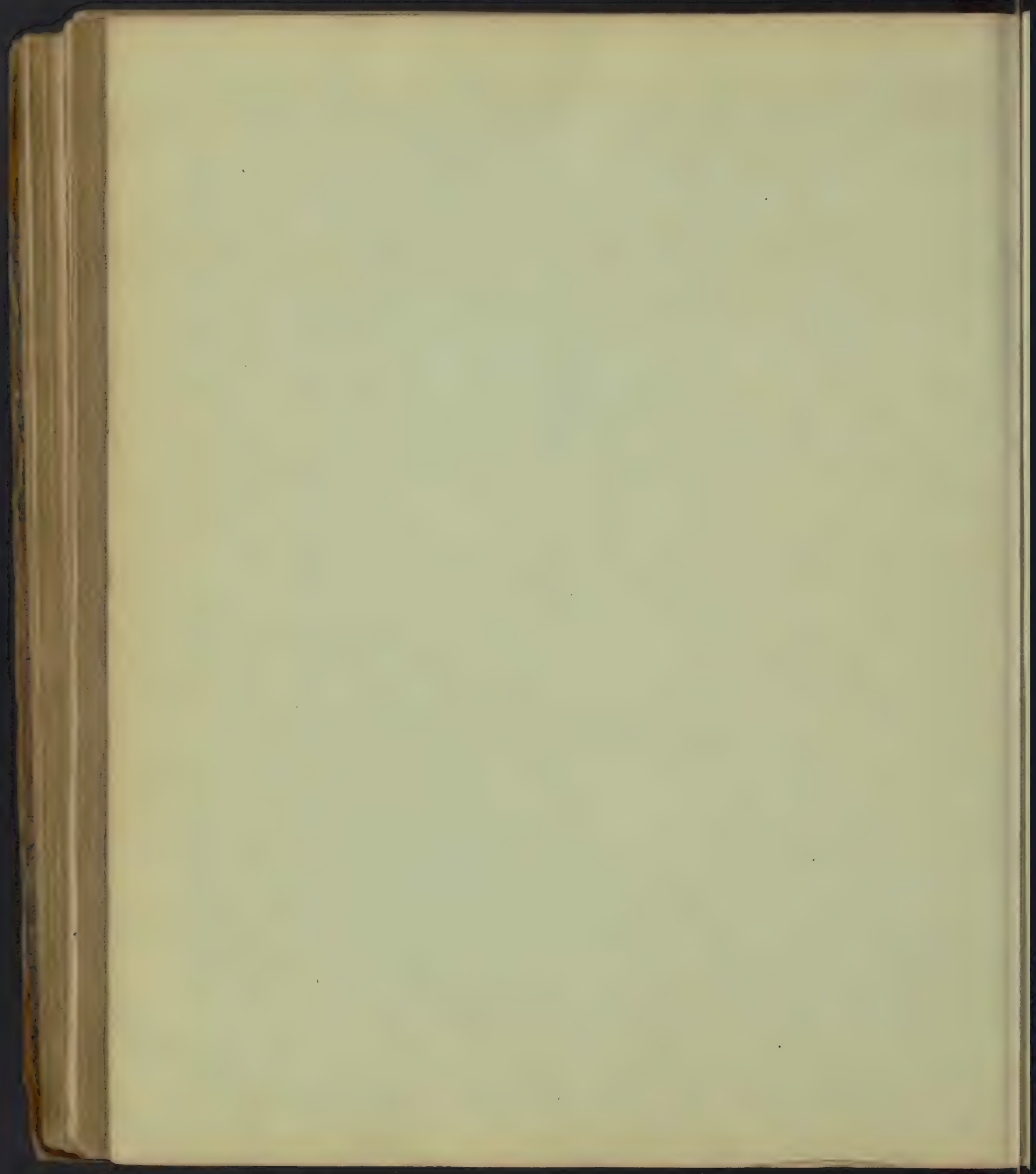


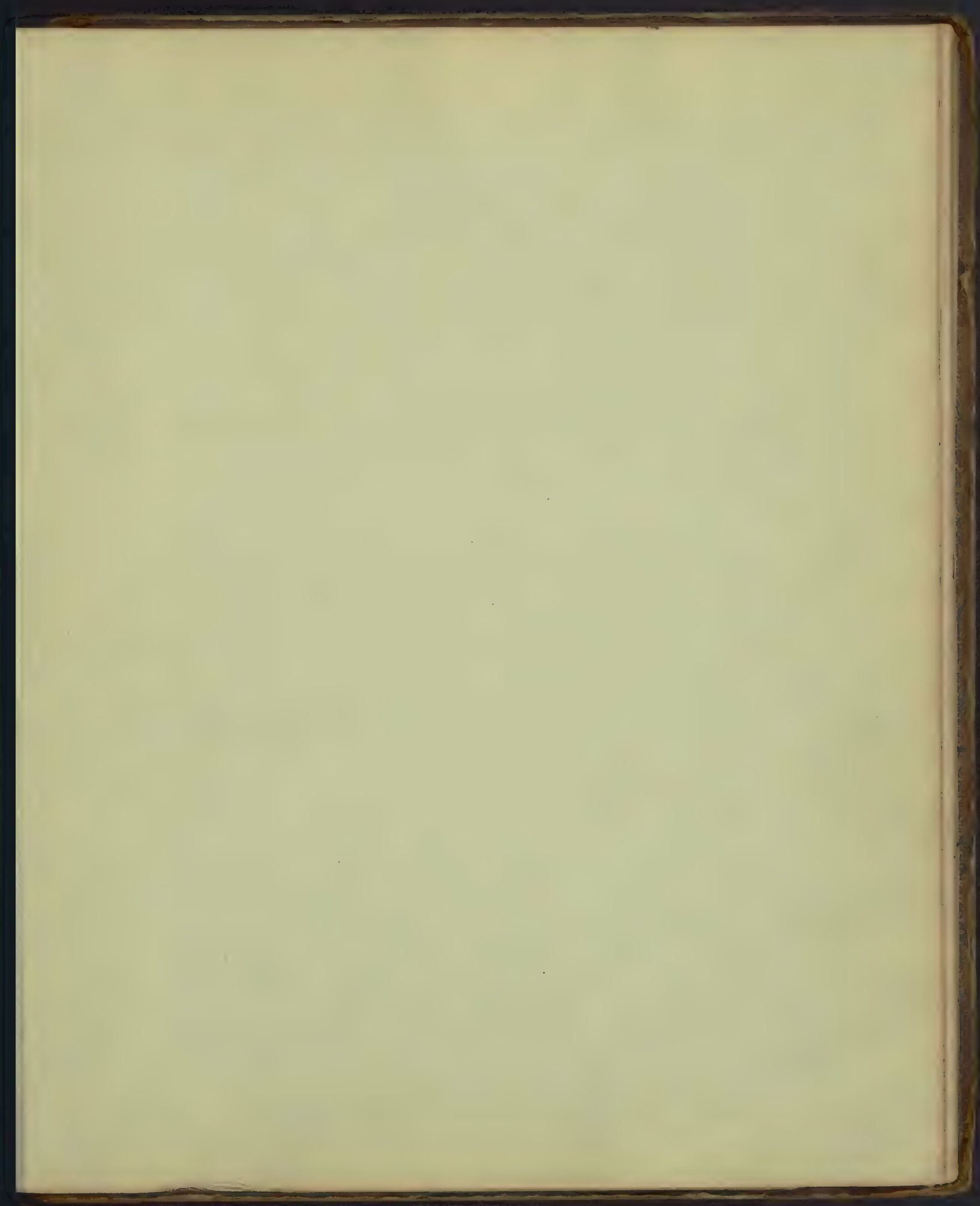


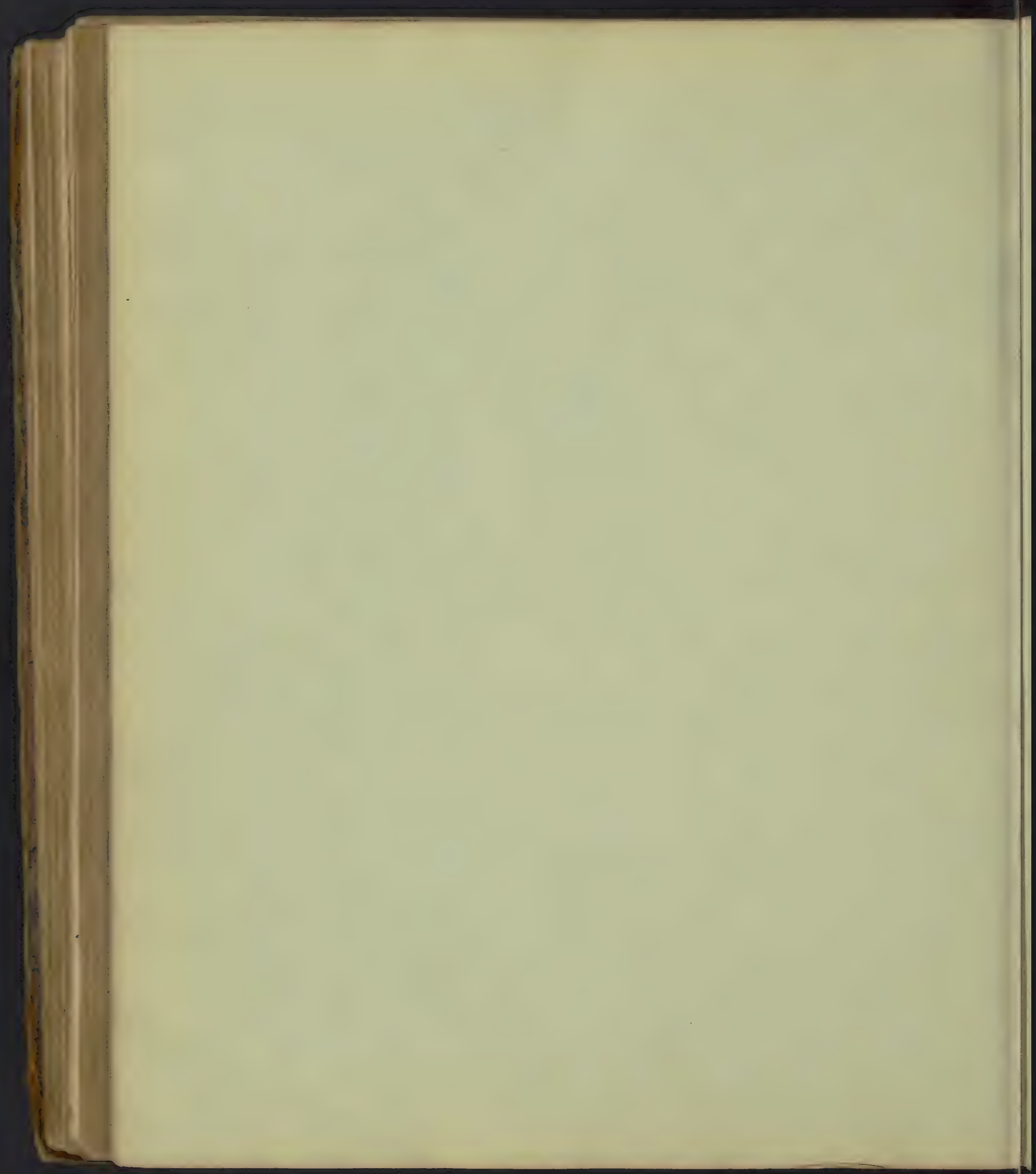


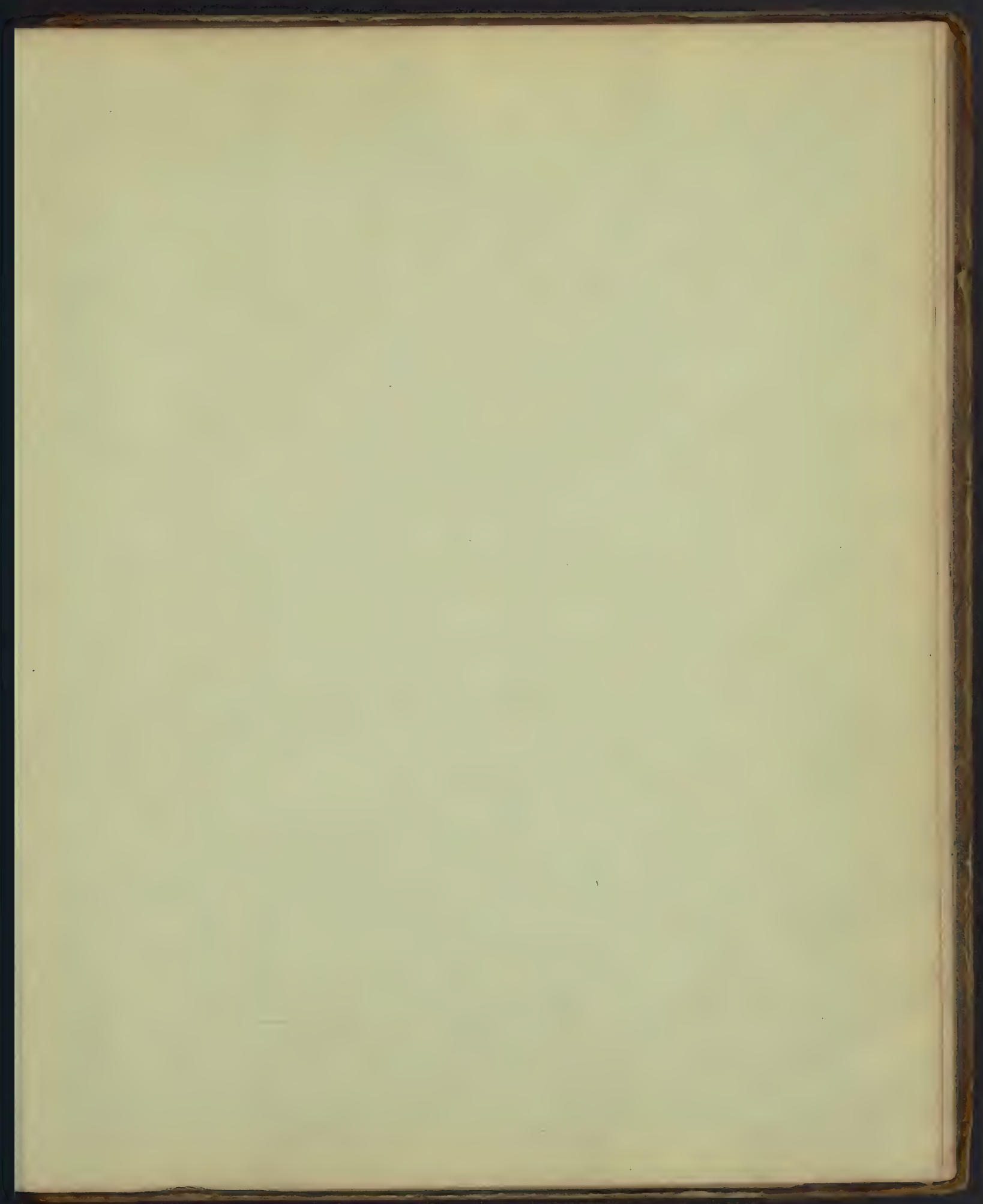


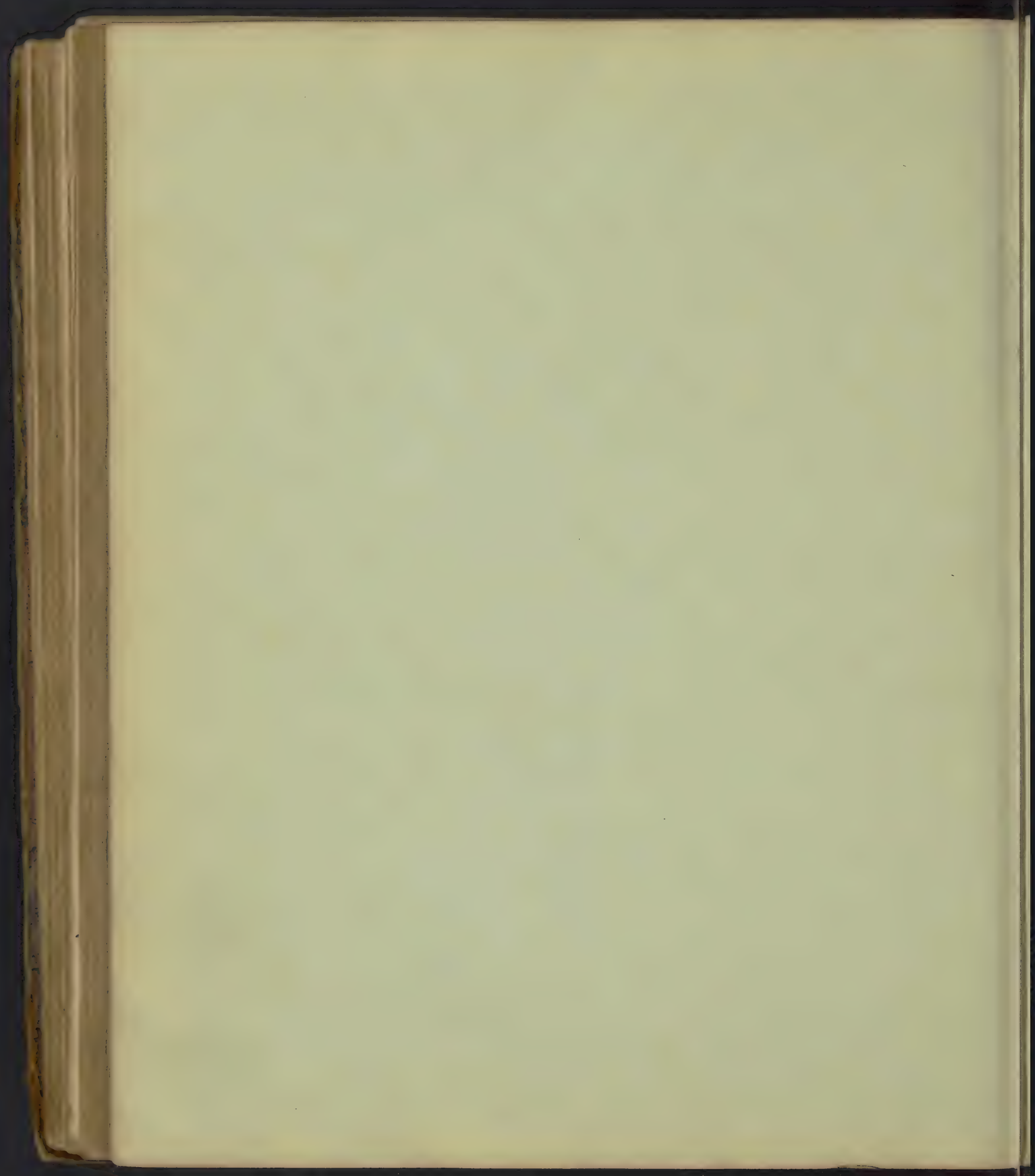


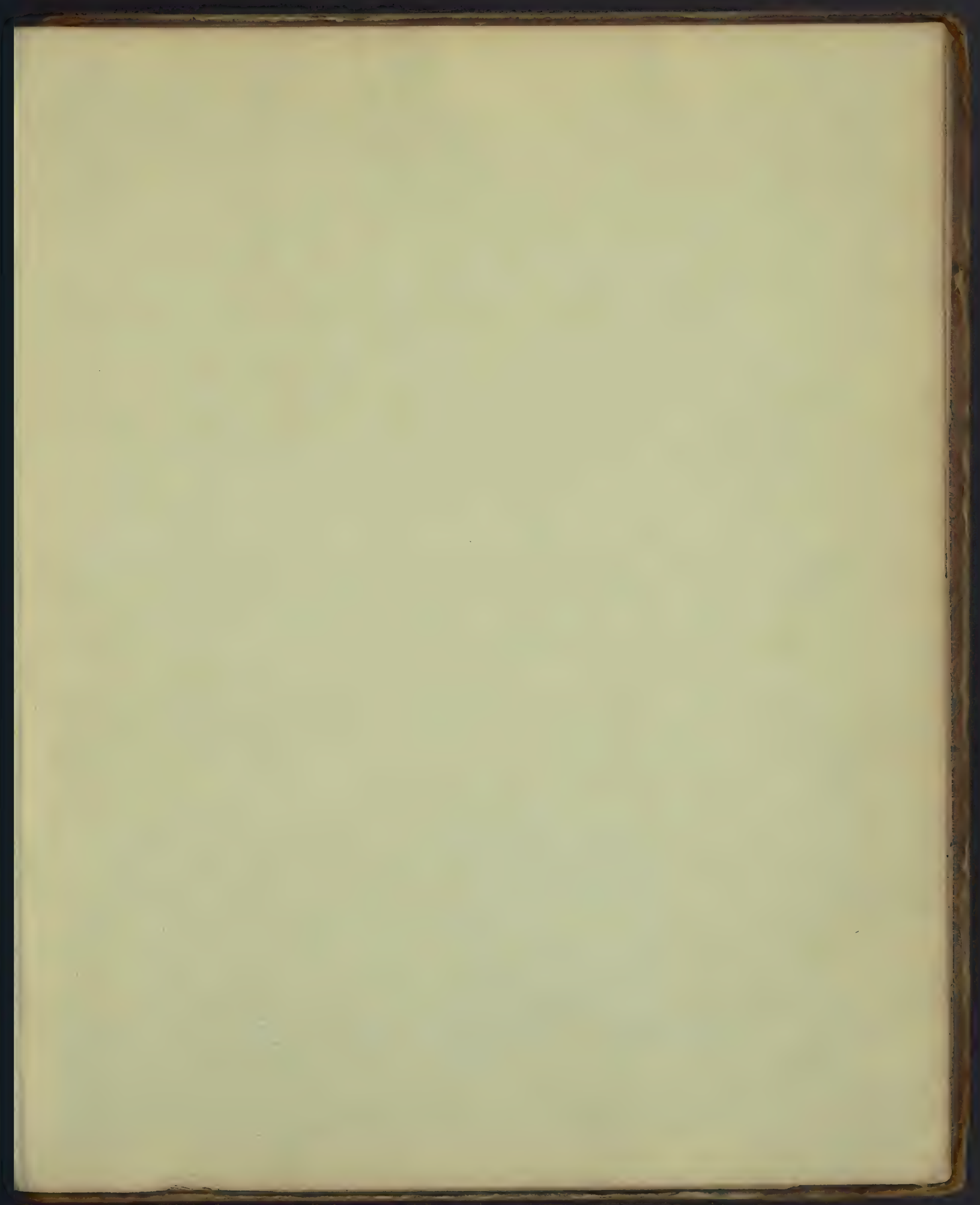


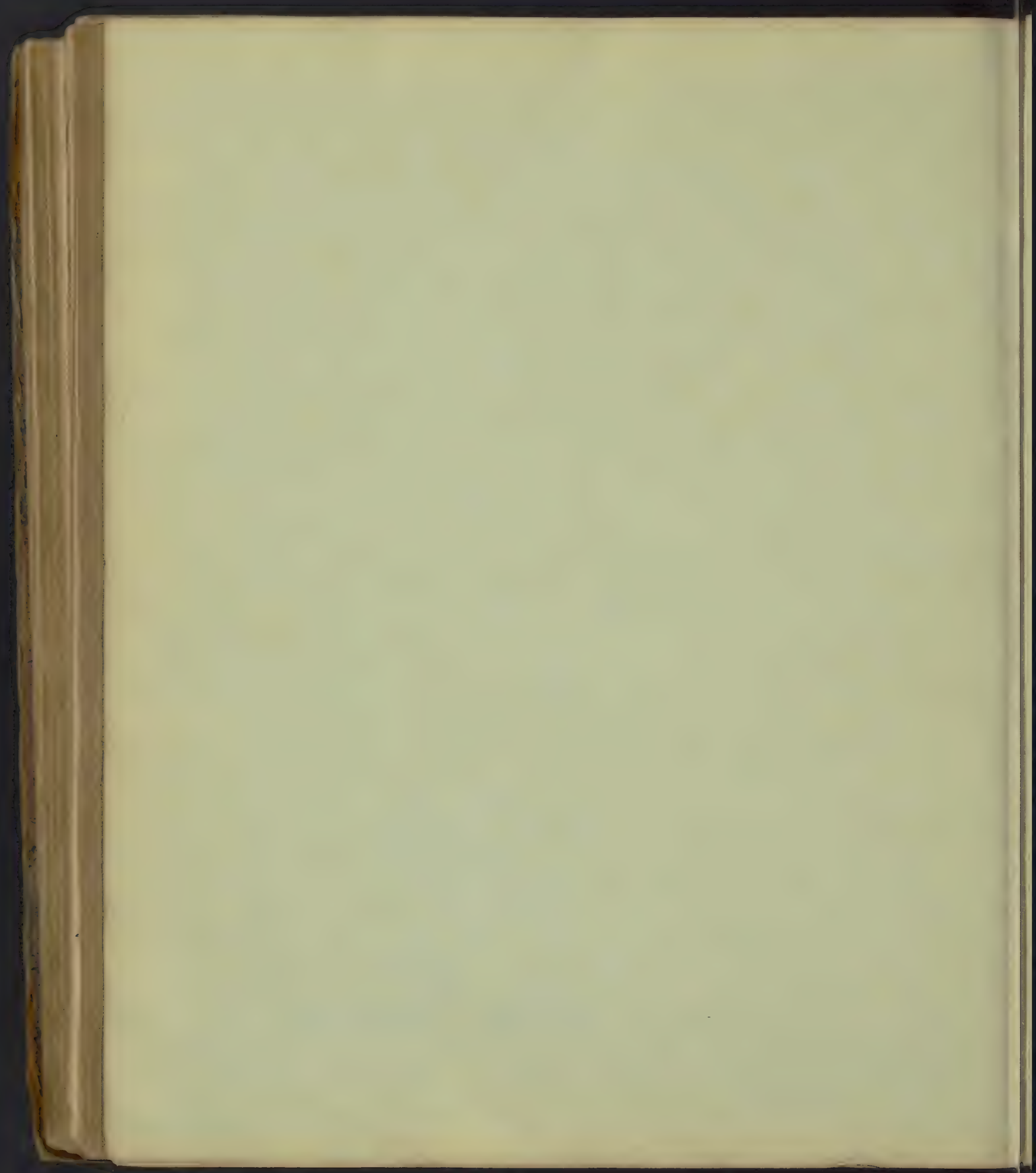


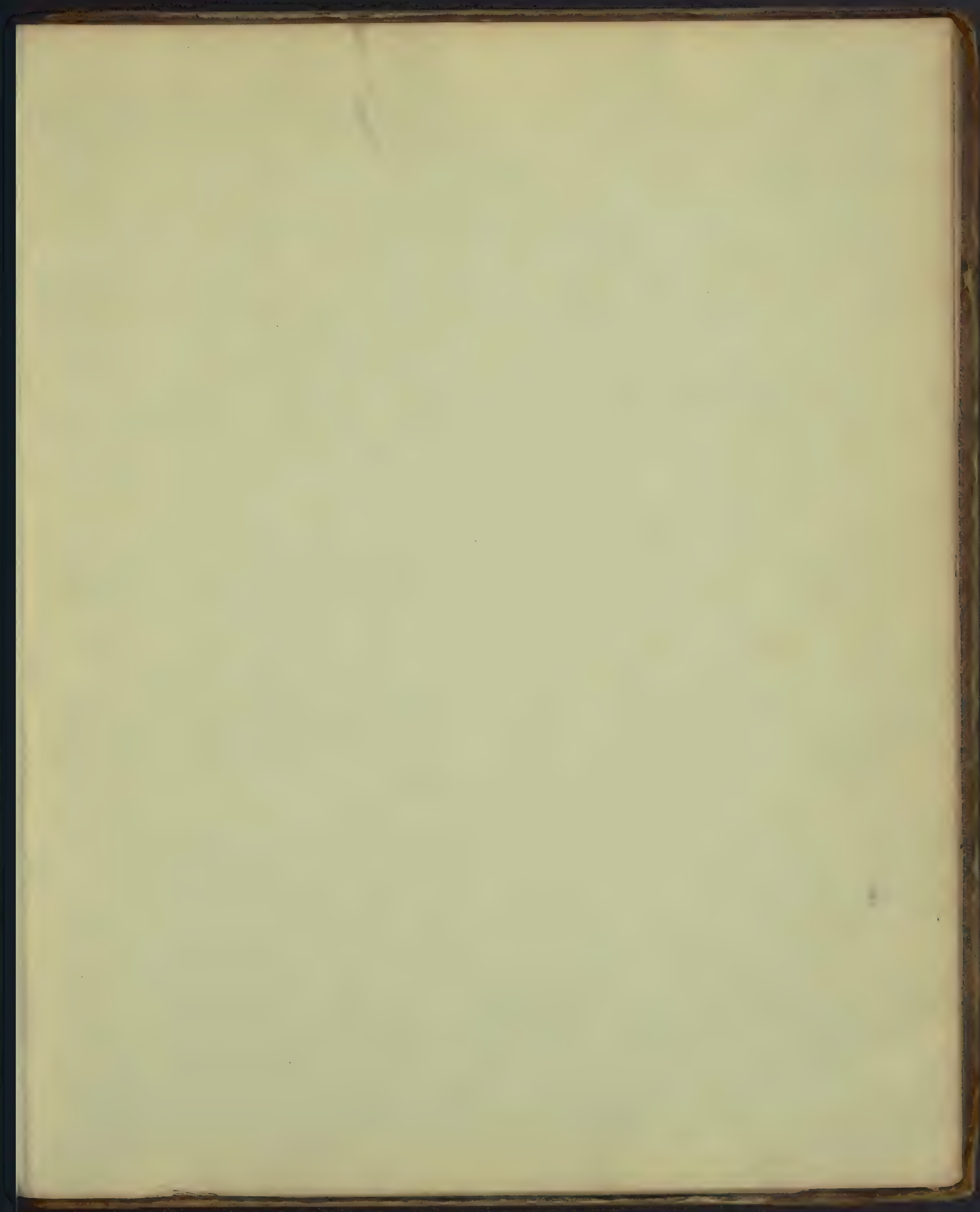


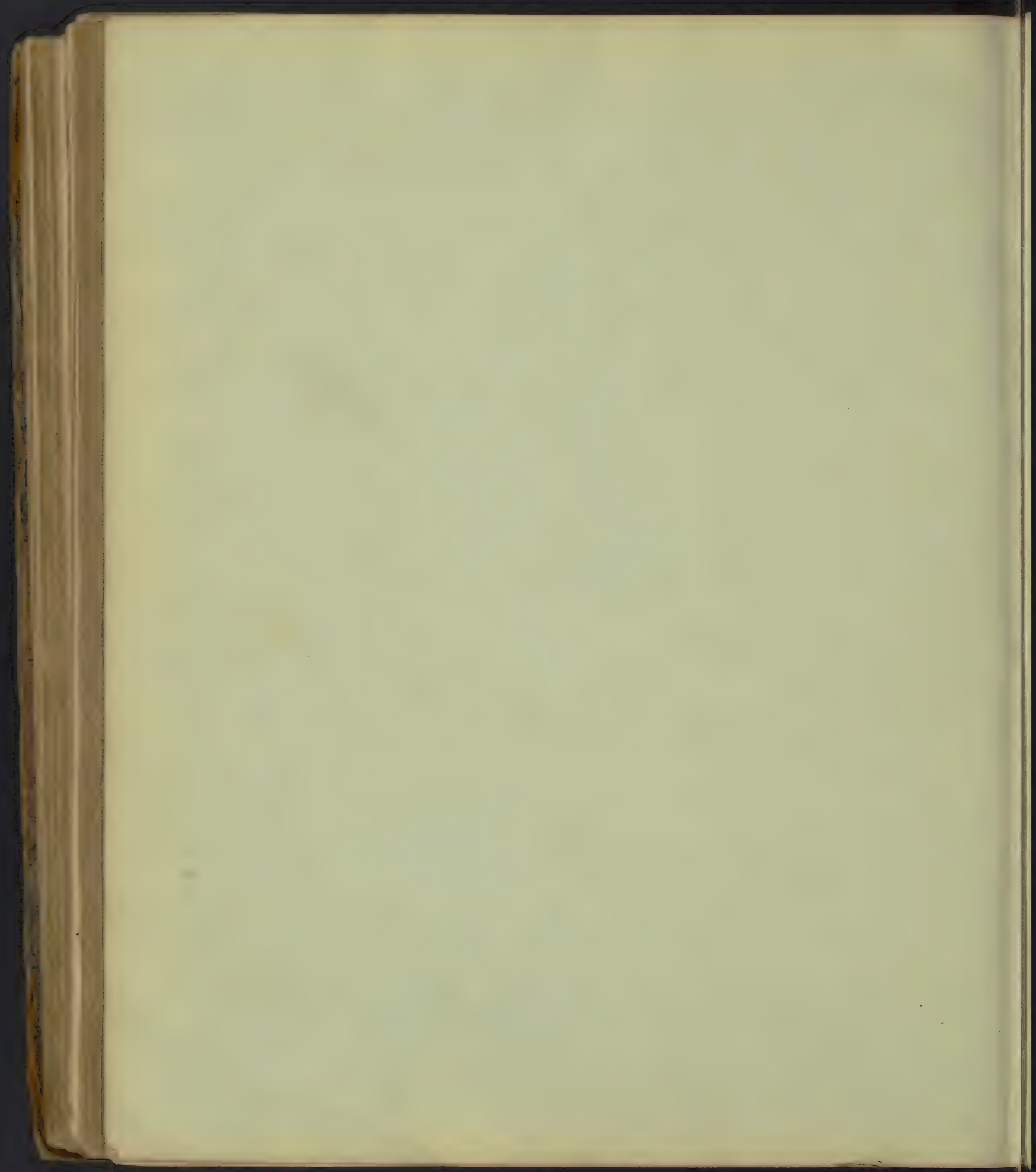


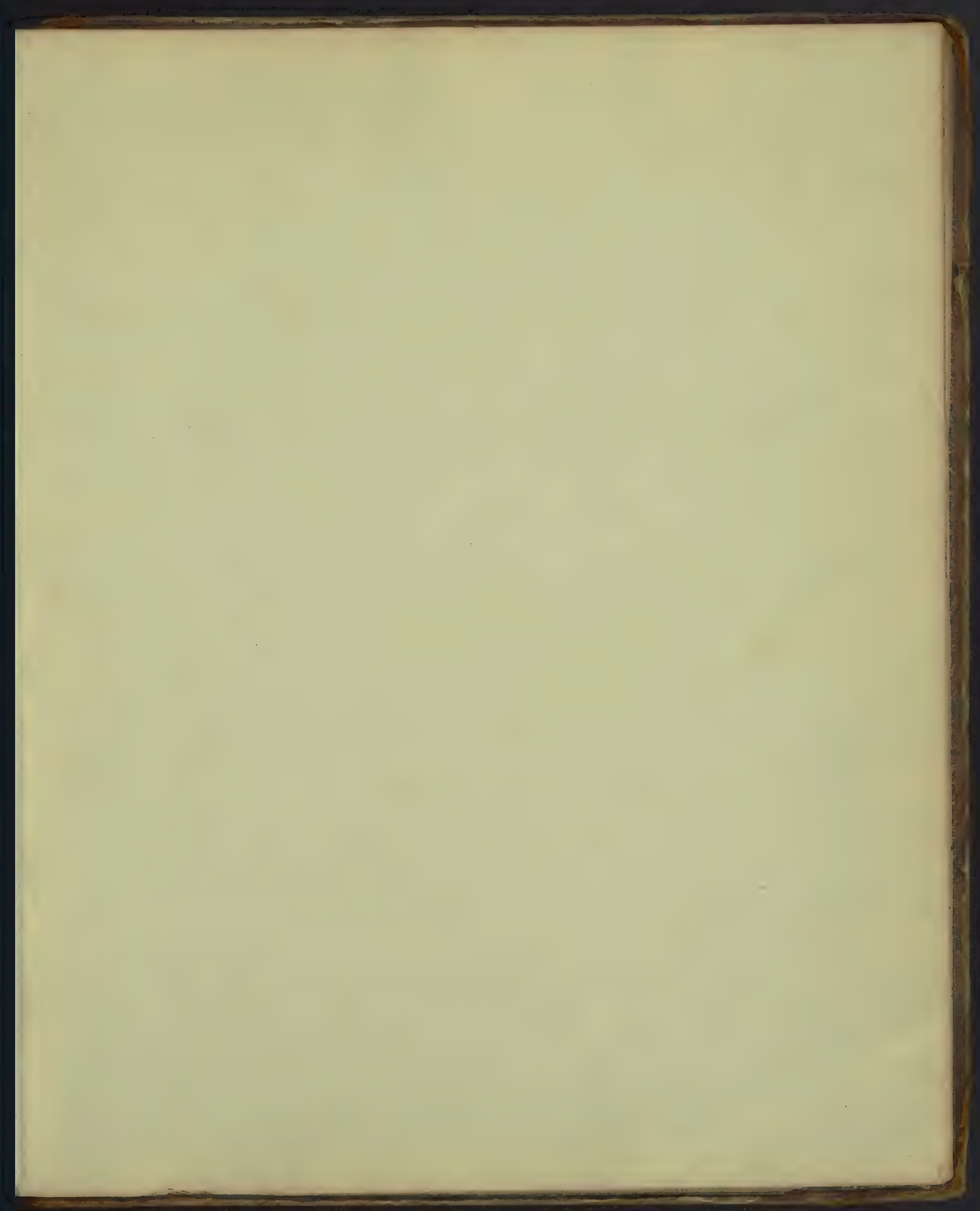


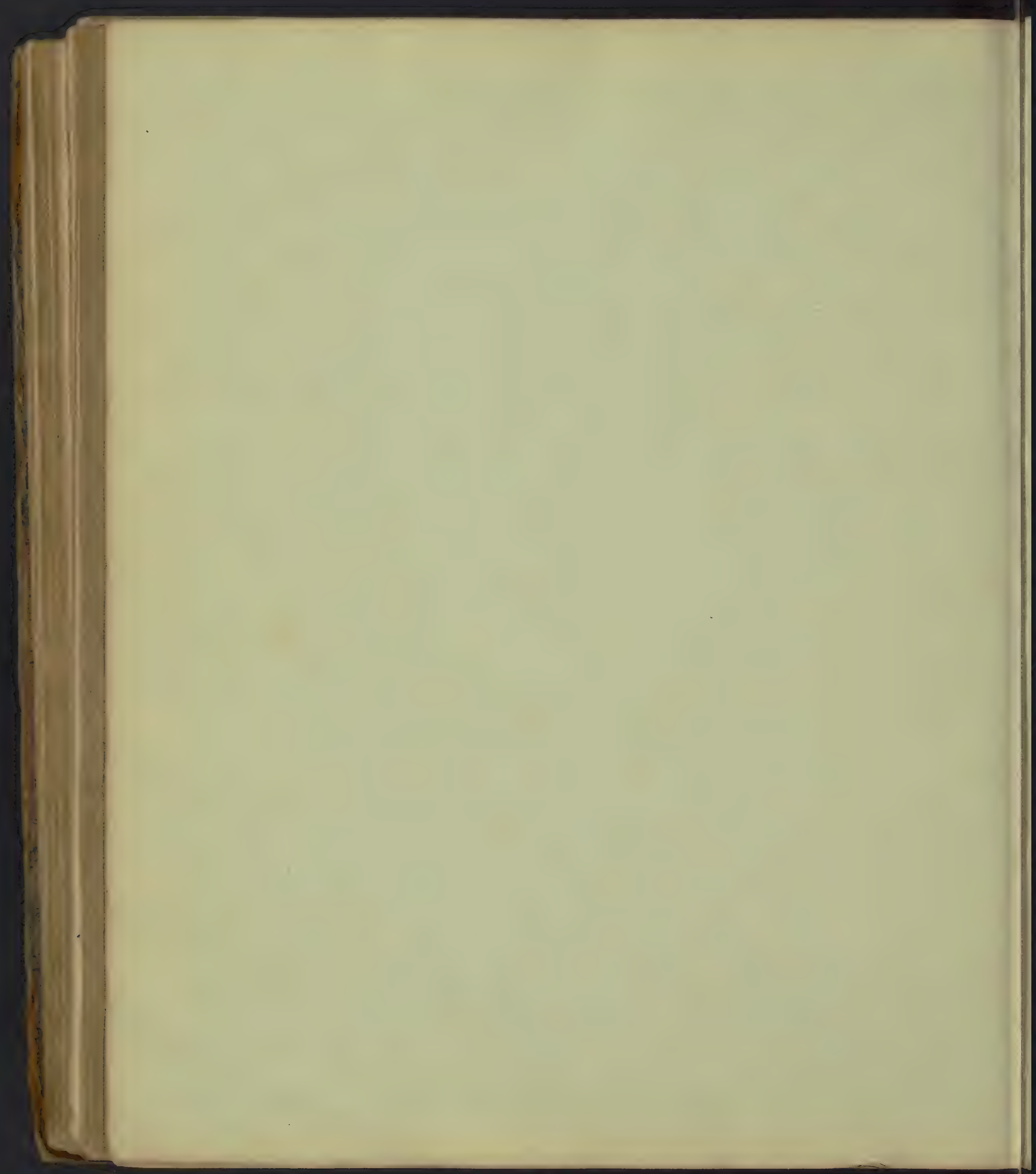


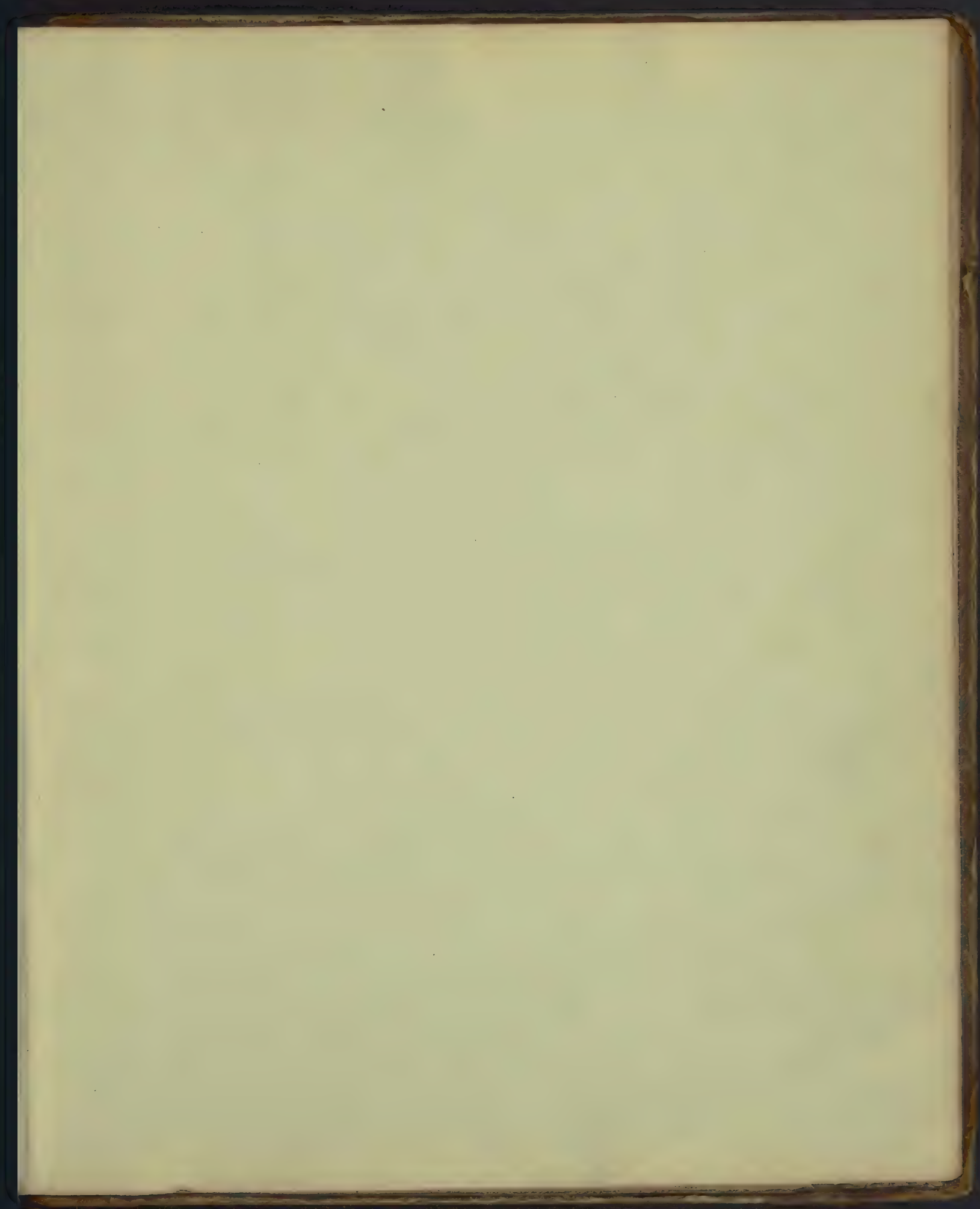


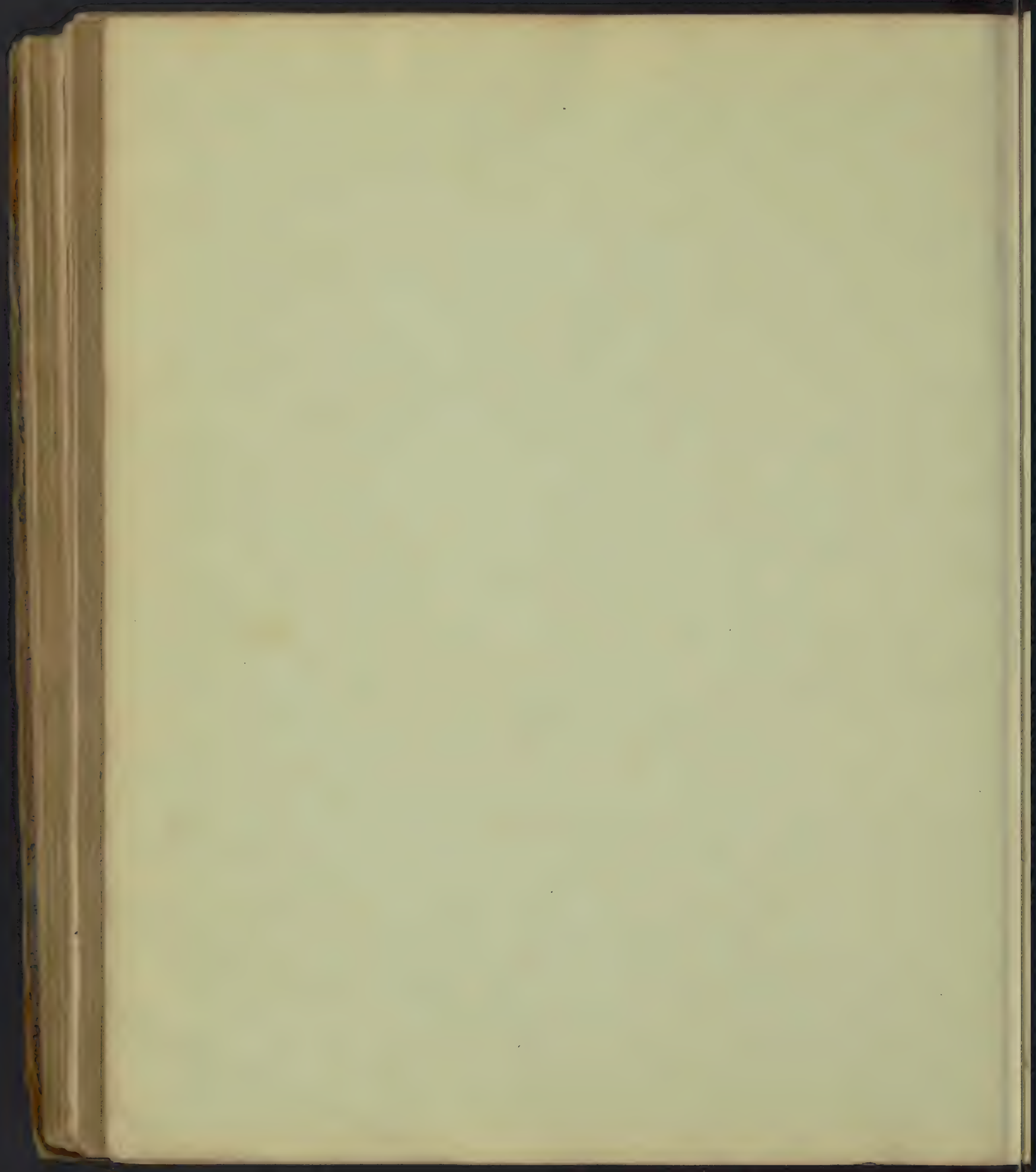


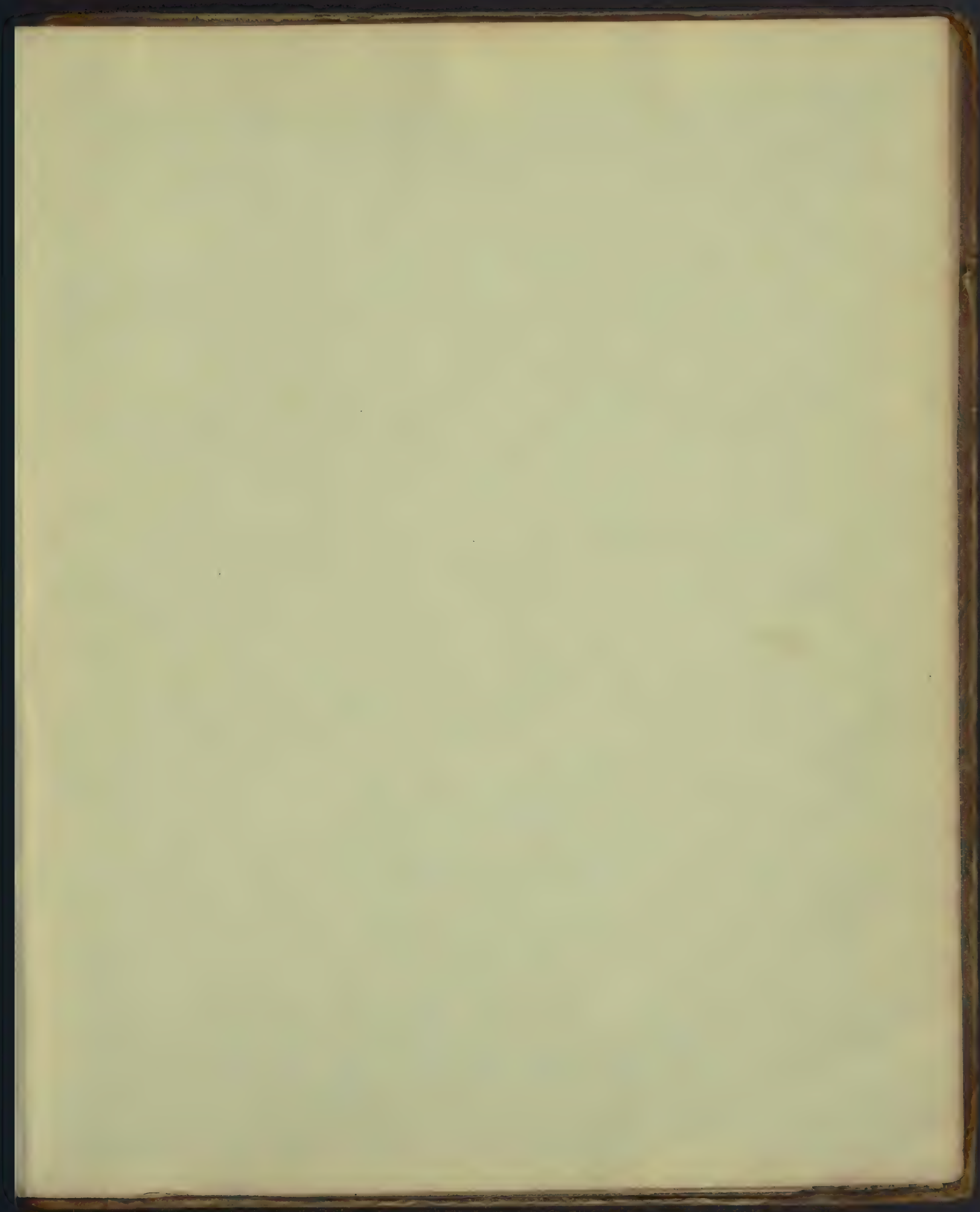


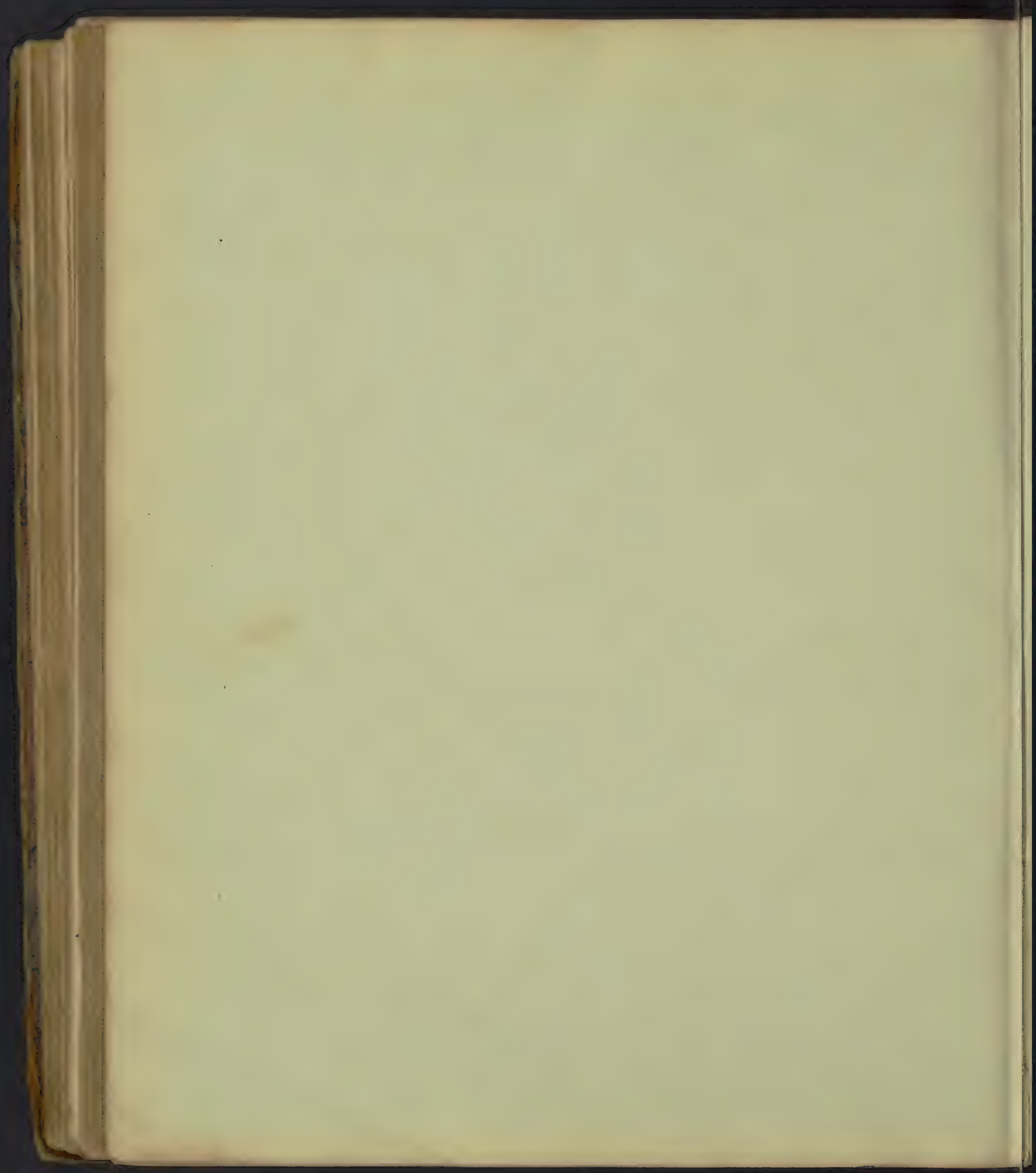


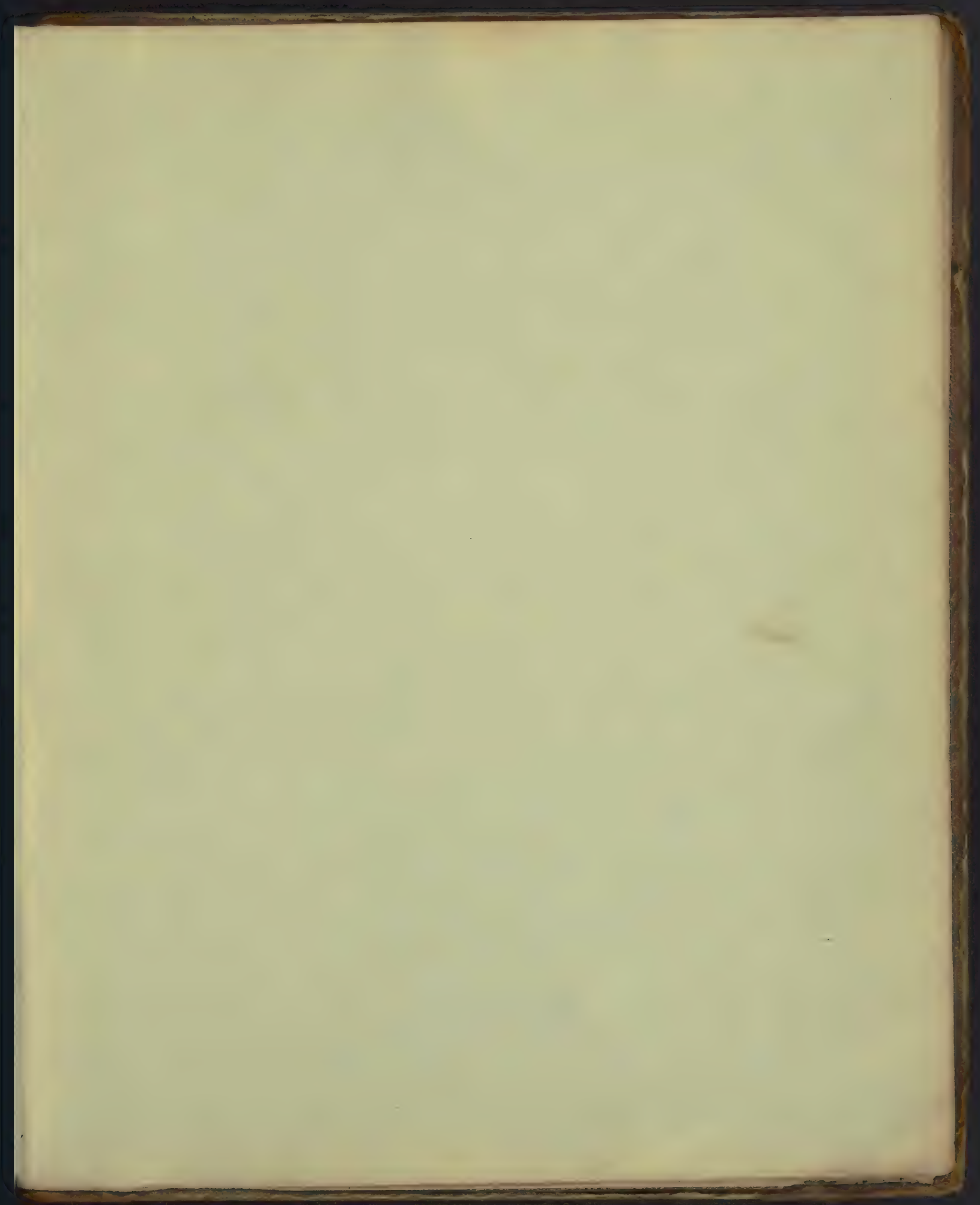


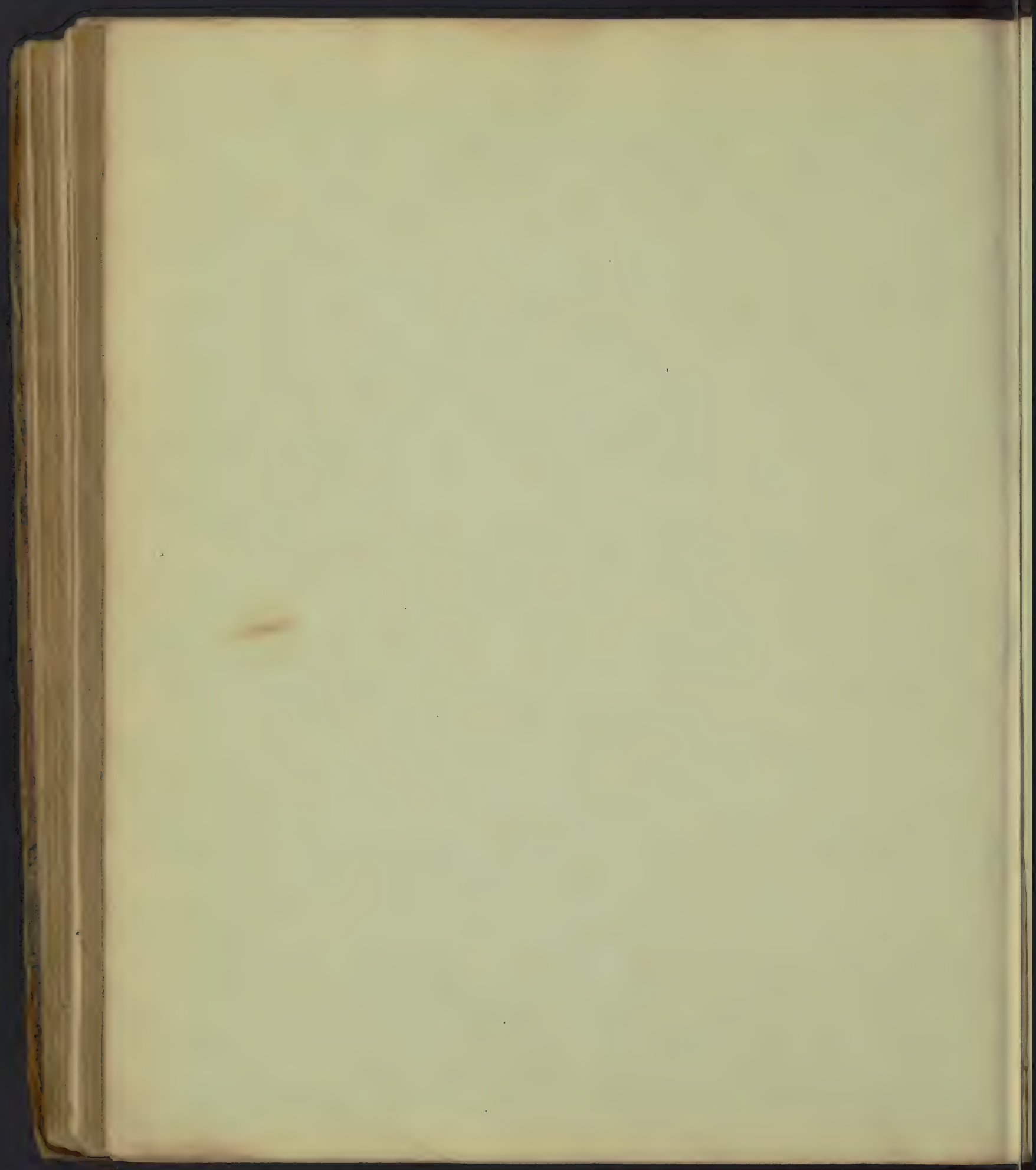


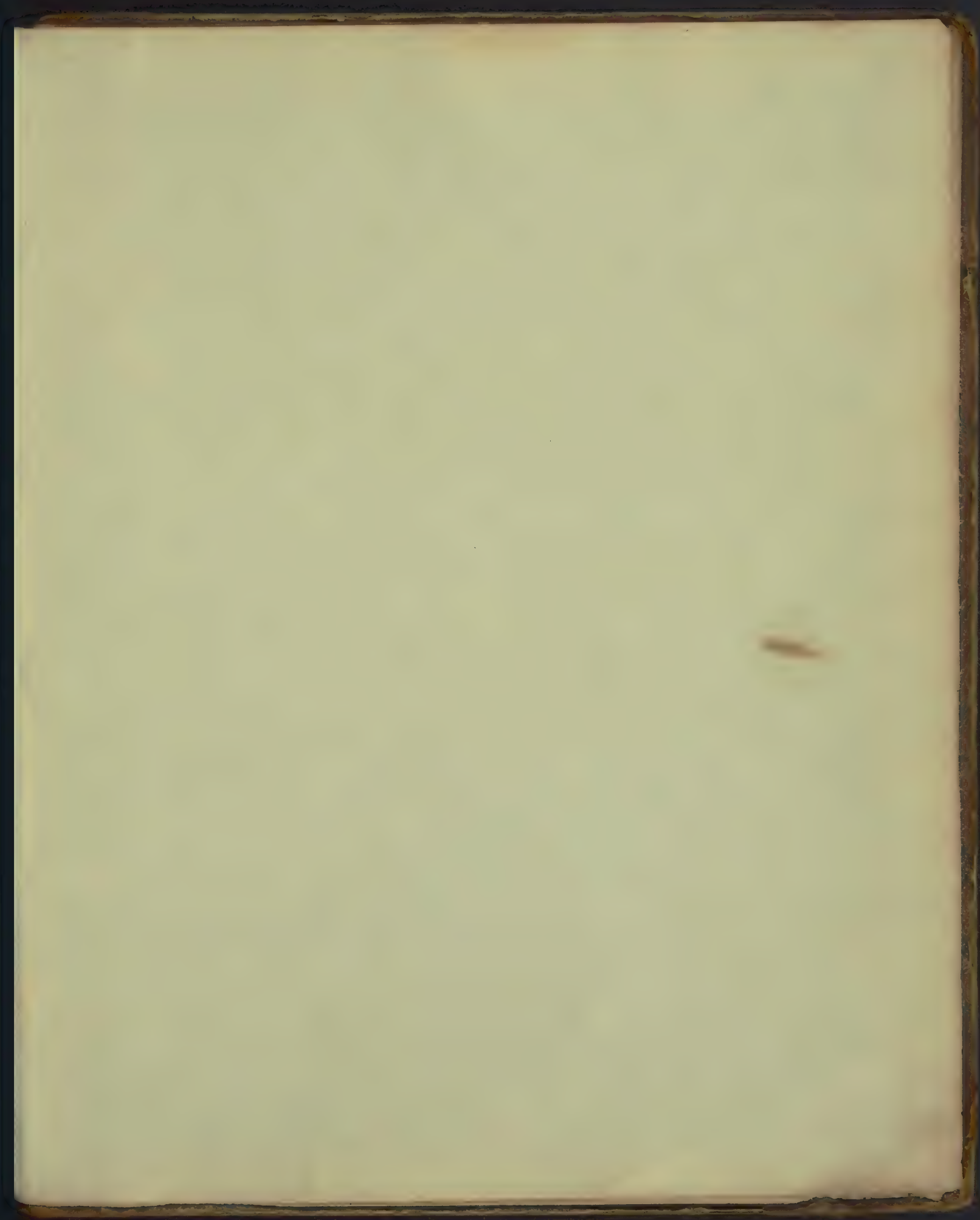


















1922. 17-1

